

Economic Development Advisory Board Agenda

October 7, 2019

7 – 9 PM

Town Hall, Room 103

All times approximate; items may be taken out of order.

- 7:00 pm** Approval of September minutes
- 7:05 pm** Continued discussion, **Public Hearing**, and Potential Vote on Warrant Article 21: Adoption of a new General By-Law prohibiting new fossil fuel infrastructure in major construction. (Gray TMM10, et al)
- 8:00 pm** Continued discussion and Potential Vote on Warrant Article 20: Amend the Town's Zoning By-law to allow Micro Unit Dwellings in the Coolidge Corner General Business District. (Zuker)
- 8:15 pm** Staff update on Warrant Article 18: definition of Lodger, and adding "Lodger, Short Term", as Use #51C under Sec. 4.07, Table of Use Regulations. (Gladstone TMM16, et al)
- 8:30 pm** Discussion, **Public Hearing**, and Potential Vote on Warrant Article 15: Eliminate Minimum Parking Requirements for storefront uses in the Transit Parking Overlay District (TPOD). (Pehlke TMM2, et al)
- 8:55 pm** Board & Staff Member Updates

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Article XXX [Prohibition on New Fossil Fuel Infrastructure in Major Construction]

Sponsored by Jesse Gray¹ (TMM-10), Werner Lohe (TMM-13), Alan Leviton, Lisa Cunningham (TMM-15), Diane Sokal, Daria Mark, Cora Weissbourd, Kathleen Scanlon (TMM-3), Heather Hamilton (SB), Raul Fernandez (SB), and Nancy Heller (SB)

To see if the town will amend the General By-Laws by adopting a new article 8.39 entitled “Prohibition on New Fossil Fuel Infrastructure in Major Construction” as set forth below.

8.39.1 Purpose

This By-Law is adopted by the Town of Brookline, under its home rule powers and its police powers under Massachusetts General Laws, Chapter 40, Sections 21 (clauses 1, 18) and 21D, and Chapter 43B, Section 13, to protect the health, safety and welfare of the inhabitants of the town from fuel leaks and explosions and from air pollution, including that which is causing climate change and thereby threatens the Town and its inhabitants.

8.39.2 Definitions

“On-Site Fossil Fuel Infrastructure” is defined as fuel gas or fuel oil piping that is in a building, in connection with a building, or otherwise within the property lines of premises, extending from a supply tank or from the point of delivery behind a gas meter.

“New Building” is defined as a new building or new accessory building (a building devoted exclusively to a use accessory to the principal use of the lot) that is associated with a valid building permit application on or after the effective date of this article.

“Significant Rehabilitation” is defined as renovation to an existing building or structure that includes the reconfiguration of space and/or building systems, in which the Work Area, not including any added space, is more than 50% of the building floor area prior to the project, and that is associated with a valid building permit application on or after the effective date of this article.

“Work Area” is defined as the portions of a building affected by renovations for the reconfiguration of space and/or building systems, as indicated by floor area in the drawings associated with a building permit application, excluding areas consisting of only repairs, refinishing, and/or incidental work necessitated by the intended work.

8.39.3 Applicability

A. The requirements of this article shall apply to all permit applications for New Buildings and Significant Rehabilitations proposed to be located in whole or in part within the Town.

B. The requirements of this article shall not apply to utility service pipe connecting the grid to a meter, or to a gas meter itself.

C. The requirements of this article shall not apply to pipes required to fuel backup electrical generators.

¹ Point of contact

D. The requirements of this article shall not apply to pipes required for restaurant-scale food preparation (cooking appliances and related appliances).

E. The requirements of this article shall not apply to the use of portable propane appliances for outdoor cooking and heating.

F. The requirements of this article shall not apply to the pipes required to produce potable or domestic hot water from centralized hot water systems in buildings with floor areas of at least 10,000 square feet, provided that the Engineer of Record certifies that no commercially available electric hot water heater exists that could meet the required hot water demand.

G. So long as new fuel piping is not installed, the requirements of this article shall not apply to the extension or modification of heating systems via HVAC system modification, or modification of radiator, steam, or hot water pipes.

H. The requirements of this article shall not apply to any building being constructed subject to a Waldo-Durgin Overlay District Special Permit, as described in Section 5.06.4.k of the Zoning By-Law.

8.39.4 Effective Date and Enforcement

Effective June 1, 2020, no permits shall be issued by the Town for the construction of New Buildings or Significant Rehabilitations that include the installation of new On-Site Fossil Fuel Infrastructure, except as otherwise provided in section 8.39.3.

8.39.5 Waivers

A waiver from this by-law may be sought from the Select Board, which shall be informed by case-by-case guidance from the Housing Advisory Board for Affordable Housing Projects, from the Economic Development Advisory Board for projects that are subject to commercial property tax, or from the Planning Board for all other projects. Evidence in support of a waiver may include financial infeasibility supported by a detailed cost comparison, inclusive of available rebates and credits, or impracticality of implementation supported by expert evaluation. For the purposes of 8.39.5, Affordable Housing Projects shall include:

1. Projects sponsored by the Brookline Housing Authority (BHA) on property owned by the Brookline Housing Authority that includes 100% affordable housing units for low-income renters.
2. Any housing or mixed use project in which 50 percent or more of the housing units will be affordable, as further defined under Section 4.08(2) "Affordable Housing Requirements".

8.39.6 - Severability

Each provision of this by-law shall be construed as separate to the extent that if any section, sentence, clause or phrase is held to be invalid for any reason, the remainder of the by-law shall continue in full force and effect.

Or act on anything relative thereto.

ARTICLE 20

Submitted by: Robert Zuker

To see if the Town will amend the Zoning By-Law as follows (proposed new language is underlined and deletions are noted with a strike through):

1. By amending the Table of Use Regulations, Section 4.07, Principal Uses, Section 6D. Dwelling, Micro Unit as follows:

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
RESIDENCE USES									
6D. Dwelling, Micro Unit *Permitted by Special Permit in the I-(EISD) District in accordance with 5.06.4.j. <u>**Permitted by Special Permit in the G-1.75(CC) in accordance with 5.06.4.b.</u>	No	No	No	No	No	No	No**	No	No*

2. By amending Section 5.01 – Table of Dimensional Requirements and the Footnotes to the Table by adding a footnote 21 as follows (new language is underlined):

DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	PBI NB ONLY	LOT WIDTH MINIMUM (feet)	MAXIMUM HEIGHT	PBI		MINIMUM YARD			OPEN SPACE (% of gross floor area)	
							B	NB	Front	Side	Rear	Landsc.	Usable
G-1.75 ²¹	Any structure or principal use (dwelling – footnote 5)	None ⁴	1.75	2.25	none	45	NA	70 (CC)**	none	none	10+ L/10	none	none ⁵

FOOTNOTES:

21. For property in the G-1.75 (CC) see also Section 5.06.4.b.

3. By amending Section 5.06.4.b Coolidge Corner General Business District paragraph 2 as follows (new language is underlined):

- 2) For such applications, the Board of Appeals may grant by special permit an increase in gross floor area subject to the procedures, limitations, and conditions of Table 5.01 and §5.21-, however, in the case of an application for a building that contains seventy-five percent (75%) or more Micro Unit Dwellings, the requirement set forth in §5.21.2.b requiring that the lot or part of the lot be 20,000 square feet or more in order to qualify for Public Benefit Incentives shall not apply.
4. By amending Section 5.06.4.b Coolidge Corner General Business District paragraph 5 as follows (new language is underlined):
- 5) For such applications, residential development shall be permitted above the first floor. Notwithstanding anything to the contrary in this By-Law, common areas, lobby or amenity space for a building that contains seventy-five percent (75%) or more Micro Unit Dwellings shall be considered non-residential space for the purposes of complying with Section 4.07.6 with respect to the requirement that in L and G districts no more than 40% of frontage may be devoted to residential use, so long as such space does not front on Harvard or Beacon Street.
5. By amending Section 5.32.2(b)(1) by adding the following language (new language underlined):
- Section 5.32.2(b)(1):
- In M-1.5, M-2.0, M-2.5, G-1.75, and O-2.0(CH) Districts, the setback requirement from any street lot line on which the lot fronts shall be one-half of the width of the street right-of-way, up to a maximum requirement of 50 feet. Notwithstanding the foregoing, this setback requirement shall not apply to Public Benefit Incentives for Micro Unit Dwellings in the G-1.75 (CC) district.
6. By amending Section 6.02, Paragraph 1, TABLE OF OFF-STREET PARKING SPACE REQUIREMENTS by adding another paragraph as Note #3 after Note #2 below the Table as follows (new language is underlined):
3. For Use 6D (Micro Unit Dwellings) the maximum number of spaces for each Micro Unit Dwelling shall be 0.5, and no additional spaces shall be required for floor areas used for common areas, lobby or amenity space.
7. By amending Section 6.02.2.i by adding language as follows:
- i. Residential uses on any lot for which any portion of the lot is within the Transit Parking Overlay District, notwithstanding the requirements of §3.02 paragraph 4, must provide no fewer off-street parking spaces per dwelling unit than 1 for studio units, 1.4 for one-bedroom units, 2 for two bedroom units, 2 for dwelling units of three or more bedrooms. For Micro Unit Dwellings no parking is required.

or act upon anything else relative thereto.

Submitted by: Scott Gladstone and Isaac Silberberg

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

1. By amending Section 2.12.3 – the definition of “Lodger” – by adding the additional language underlined below:

A person who rents space for living or sleeping purposes, for a period of 30 consecutive days or longer, and who is not within the second degree of kinship to the lessor.

2. By Amending Section 2.12 – “L” Definitions – to add a new item known as “Lodger, short term” after the term “Lodger,” as follows:

Lodger, short term: A person who rents space for living or sleeping purposes, for a period of fewer than 30 consecutive days, and who is not within the second degree of kinship to the lessor.

3. By amending Section 4.07 – Table of Use Regulations – to allow short term lodgers in certain restricted situations by adding a new use 51C as follows:

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
51C Within a dwelling unit, which is owner occupied and registered under M.G.L. c. 64G and M.G.L. c. 62C §67 and under any additional registration required by the By-Law as it may be amended from time to time, and conforming to Brookline regulations of this use as they may be promulgated and amended from time to time, the renting of not more than two rooms as a lodging to a short term lodger, without separate cooking facilities and for not more than two short term lodgers. In the case of a dwelling unit occupied by unrelated persons, the sum of short term lodgers and other unrelated persons shall not exceed the limit defined for a family in Section 2.06, paragraph 1. The owner of the dwelling unit, or a Lodger living in the dwelling unit, or a designated property manager must sleep in the dwelling unit being rented to a short term lodger for all but one night of such short term lodger’s rental.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

... or act upon anything else relative thereto

Petitioner explanation

The Building Department currently interprets the definition of “Lodger” under the Zoning By-Law to mean a lodger for 30 days or more. This warrant article makes explicit the interpretation that the Town has been using for the proposition that short term lodging, such as those offered by Air B and B and similar services, are not a permitted use in Brookline. As a consequence, based on complaints, the Building Department has been shutting down advertised Air B and B’s and similar short term rentals.

This warrant article also adds a new definition for “short term lodgers” and adds a new use that explicitly permits short term lodging under conditions similar to those already allowed for lodgers for 30 days or more, which is permitted under the existing Use 51. The proposed new Use 51C, includes the same restrictions as the existing Use 51: renting of not more than two rooms, which rooms cannot have separate cooking facilities, to not more than two short term lodgers and in no event can more than 4 of unrelated persons dwell at one time in a dwelling unit.

The proposed new use would have the following additional requirements:

1. The owner would need to be registered under the Commonwealth’s short term rental registration system created by G.L. c. 64G and 62C, Section 67;
2. The owner would need to comply with any additional registration or regulatory requirements the Town may choose to impose through amendments to the Town By-Law; This is similar to Existing Use #7 for Lodging Houses, which states that the Lodging House use is subject to a license from the Select Board and to applicable Town regulations.
3. The owner of the dwelling unit, or a Lodger (long term) living in the dwelling unit, must sleep in the dwelling unit being rented to a short term lodger for each night of such short term lodger’s rental in order to avoid a scenario wherein (i) an owner-occupier vacates the unit in order to facilitate the short-term lodger or (ii) the owner occupier of a two, three or multi-family building rents the units in which the owner does not live to short term lodgers.

Town Meeting previously accepted the terms of G.L. c. 64G, Section 3A in order to be able to facilitate a local use tax on hotels. By operation of recent amendments to G.L. c. 64G, such taxes are now automatically applicable to short term rentals. That being the case, every Air B&B renter, who has not been shut down by the Town, will in theory be paying the local tax into the Commonwealth and the Town will then start collecting that tax payment as of July 1, 2019. This warrant article will legalize at least some of the uses for which the Town will be collecting that tax.

The primary motivation for starting with the proposed new Use 51C is to permit low and fixed income people to be able to take advantage of short term rentals in order to supplement their income and facilitate their staying in their homes. Such owners may prefer to supplement their income in this fashion, as opposed to taking on long term lodgers as roommates, in order to maintain their autonomy and privacy when the spare bedroom(s) are not rented. Also, long term lodgers may be more difficult to evict if they become a problem for the owner, which is less of a concern when it comes to short term renters. Thus, this proposal has a strong economic justice component.

Name (printed)

Name (signature)

Address

1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____
7.	_____	_____	_____
8.	_____	_____	_____
9.	_____	_____	_____
10.	_____	_____	_____
11.	_____	_____	_____
12.	_____	_____	_____
13.	_____	_____	_____
14.	_____	_____	_____
15.	_____	_____	_____

To see if the Town will amend Section 6.04 of the Zoning By-law (“Design of All Off-Street Parking Facilities”) by amending paragraph 11, as follows (new language appearing in bold/italics, deleted language appearing in strikeout):

11. Parking lots for six vehicles or fewer shall conform to the regulations of this section, with the exception of paragraphs 2., 3., 4., (subparagraphs a. and b.), ~~and 7.,~~ **and 15.**

And adding a new paragraph 15, to read:

§6.04.15 – ELECTRIC VEHICLES

15. At least 15% of parking spaces, and not less than a single parking space, must be EV READY, as defined in Section C405.10 of 780 CMR 13, the Massachusetts Building Code. If a charger is provided, users may be charged a reasonable fee for time the equipment is in use and/or electricity consumed. The count of EV READY spaces may include spaces designated for visitors or tradespeople, and need not be reserved for the use of Electric Vehicles. Changes in the requirements of this section, consistent with the intent of encouraging electric vehicle adoption, may be approved by the Board of Appeals for an individual building by special permit.

or act on anything relative thereto.

ARTICLE 15

Submitted by: Linda Olson Pehlke, TMM Pct. 2, and Paul Saner, TMM Pct. 13

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

1) Adding the following language to Section 6.02, Paragraph 1:

“e. For storefront uses (which shall include Uses 12 through 14 inclusive, 16 through 18A inclusive, 20 through 21 inclusive, 29, 30, 32 through 36A inclusive, 36C, 37 and 44, as listed in **Article IV**) on any lot for which any portion of the lot is within the Transit Parking Overlay District, the parking ratios specified in the table in **6.02, paragraph 1** shall serve as maximum allowable parking ratios. These storefront uses are not subject to the minimum parking space requirements in Section 6.02.

2) Changing the final footnote to Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements as follows:

“Section 6.02, paragraphs ~~1,2~~ through 7. contain additional requirements by type of use and by location.

Or act on anything relative thereto.

ARTICLE 16

Submitted by: Paul Warren, TMM1 and Heather Hamilton, Select Board Member

To see if the Town will vote to adopt the following resolution: