

**TOWN OF BROOKLINE ADVISORY COMMITTEE**  
**Planning and Regulation Subcommittee Report**  
**Warrant Article 21 – Micro Unit Dwellings and Age Restricted Dwellings**

The Planning and Regulation Subcommittee of the Advisory Committee held a public hearing on Monday, March 22, 2021, virtually on the Zoom platform to review Warrant Article 21. In attendance were Subcommittee members Steven Kanes (Chair), David Pollak, Carlos Ridruero, Lee Selwyn, and Neil Wishinsky. Victor Panak represented the Department of Planning and Community Development and presented the WA. Roger Blood, Eric Coles, Lisa Cunningham, Jennifer Dopazo Gilbert and Michael Zoorob attended.

**Summary**

WA 21 was submitted by the Planning and Community Development Department pursuant to 2020 Special Town Meeting’s referral of the issue to the Department. WA 21 proposes changes to the Zoning Bylaw that remove all references to “Micro Unit Dwellings” (MUDs) and “Age-Restricted Dwellings” (ARDs) from the Definitions Section and Use Table of the Zoning Bylaw, and revises Section 5.06.4.j (the Emerald Island Special District, or EISD) so that MUDs and ARDs are addressed within that Section consistent with the current treatment of those uses in that District. The Planning and Regulation Subcommittee unanimously recommends favorable action on WA 21 to the Advisory Committee.

**Background**

- Pre-2016: MUDs (units with <500 SF) and ARDs were not identified as unique residential use categories, and were permitted throughout Town.
- 2016 Special Town Meeting: Article 7 (EISD) defined MUDs and ARDs and added them to the Use Table as *distinct uses* from 1F, 2F, 3F, and MF dwelling units, prohibiting them everywhere except the EISD
- 2020 Special Town Meeting: Article 27 sought to remove the prohibition of MUDs. The subject matter was referred to the Planning Department for development of a revised Warrant Article to be considered at the 2021 Annual Town Meeting.

**Objectives**

The Warrant Article proposed by the Department seeks to restore the pre-2016 condition where dwelling units (except within the EISD) are regulated under the preexisting 1F, 2F, 3F and MF uses such that:

1. MUDs and ARDs are permitted in all zoning districts;
2. MUDs and ARDs are permitted in the same way as other dwelling unit uses;
3. The treatment of MUDs and ARDs in the EISD is unchanged;
4. The Zoning Bylaw is otherwise unchanged;

**Strategy**

1. Eliminate all references to MUDs and ARDs outside the EISD Section of the Bylaw;
2. Reintroduce the definitions for MUDs and ARDs within the EISD Section and specify that they are for the purpose of that Section only.

### **Future treatment of MUDs, ARDs, and/or other distinct residential uses**

Mr. Panak noted that the Department recommends addressing any (future) special treatment of MUDs or ARDs with changes to the relevant section of the Bylaw. For example, any adjustments to parking requirements would be made in Article VI: Vehicular Service Uses Requirements.

### **Discussion**

The discussion touched on several topics that were major concerns surrounding 2020 STM's WA 27 – the subject of the referral that resulted in this WA 21. These included parking, density and neighborhood character, housing diversity and housing affordability. At the same time, the Subcommittee commended the Department in successfully fulfilling the intent of the referral motion and the stated objectives.

### **Parking**

The question remains as to whether micro- and/or age-restricted dwelling units should have reduced parking requirements. Opinions differ, and the subject is not before us with the current WA 21. Mr. Panak noted that more information is needed, and that the Department is planning a major parking study that will provide that information. There was further discussion of how and when to conduct that study given the changed conditions relating to the pandemic.

### **Density and neighborhood character**

There was discussion of the potential impact of increased dwelling density on neighborhoods and existing housing stock. However, given the current parking requirements it was acknowledged that little is likely to change in response to WA 21. Another concern that was raised related to short-term rentals and the possibility that micro units could end up as de-facto hotel units.

### **Housing diversity and housing affordability**

A member of the public noted that it is important that we have a town that welcomes people of all income levels, and that having small apartments does that. However, several Subcommittee members expressed their skepticism that small market-rate apartments would meet any definition of affordable, noting that rents would likely still be north of \$2,000/month.

### **Recommendation**

The subcommittee voted 5-0 to recommend to the Advisory Committee a Recommendation of Favorable Action on WA 21 as submitted in the Warrant. The text is as follows:

### **ARTICLE 21**

**Submitted by:** Planning and Community Development Department

Voted the Town will:

- 1) Amend Section 2.04.3 of the Town of Brookline Zoning By-law as follows (deletions appearing in strikeout, new language in underline):

## §2.04 – “D” DEFINITIONS

...

### 3. DWELLING

- Dwelling, Attached: A building designed or occupied as a resident and separated from another attached dwelling on one or both sides either by a vertical party wall or walls or by a contiguous wall or walls without side yards.
- a. Dwelling, Detached: A building which is designed or occupied as a residence and is substantially separated by side yards from any other structure or structures except accessory buildings.
  - b. Dwelling, Multiple: A building or structure designed or occupied as a residence by more than three families, but not including groups of attached dwellings; an apartment house.
  - c. Dwelling, Live/Work Space: A building or any portion thereof containing common work space areas and/or dwelling units measuring no more than 900 square feet in gross floor area per unit that are used by at least one occupant as both their primary residence and primary work/artist studio space, including use 46 (Light Non-Nuisance Manufacturing) and 58A (Home Office) as certified annually by the property owner with the Building Commissioner.
  - d. ~~Dwelling, Age Restricted: A building where all residents are 62 years of age or older. Such units shall be subject to an age restriction described in a deed, deed rider, restrictive covenant, or other document in a form reasonably acceptable to Town Counsel that shall be recorded at the Registry of Deeds or the Land Court. Age and occupancy restrictions shall not preclude reasonable, time limited guest visitation rights or accommodation for caretakers for the primary resident. The age and occupancy restrictions shall be enforceable solely against the violating unit and not the development as a whole, by the owner of one or more dwelling units or by the Town of Brookline. In the event of a violation, and at the request of the Town, the owner of the unit shall comply with the age and occupancy restrictions.~~
  - e. ~~Dwelling, Micro Unit: A building or any portion thereof containing residential units measuring no greater than 500 square feet in gross floor area per unit. Buildings containing Micro Units may have flexible common areas for living and/or working.~~
- 2) Amend Section 4.07, Use 6C and Use 6D of the Town of Brookline Zoning By-law as follows (deletions appearing in strikethrough, new language in underline):

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
6C: Dwelling, Age Restricted *Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.	No	No	No	No	No	No	No	No	No*
6D: Dwelling, Micro Unit *Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.	No	No	No	No	No	No	No	No	No*

3) Amend Section 5.06.4.j of the Town of Brookline Zoning By-law as follows (deletions appearing in strikeout, new language in underline):

*j. Emerald Island Special District*

- 1) The Emerald Island Special District – the area bounded by River Road, Brookline Avenue, and Washington Street – is an area in transition. It has been determined through study by the River Road Study Committee that specific zoning parameters are required to encourage appropriate redevelopment of this district. In developing these zoning parameters, due consideration has been given to the prominent location of this area as a major gateway to Brookline. The proximity of the Muddy River, Emerald Necklace, Longwood Medical Area as well as the differences in the scale of existing buildings, recently permitted and proposed developments, access to transit, and the solar orientation of sensitive nearby uses, including the residences of Village Way and Emerald Necklace Park all combined to shape the Special District parameters. Following a comprehensive study by financial, architecture, urban design and real estate experts, the Committee further concluded that the following concepts related to allowed uses, building heights, building form, parking requirements and the public realm are appropriate for this Special District.
- 2) Definitions. For the purposes of Section 5.06.4.j, the following terms shall have the listed definitions:
  - a. Micro Unit Dwelling: A building where a minimum of 50% of residential units measure no greater than 500 square feet in gross floor area. Buildings containing Micro Units may have flexible common areas for living and/or working.
  - b. Age Restricted Dwelling: A building where all residents are 62 years of age or older. Such units shall be subject to an age restriction described in a deed, deed rider, restrictive covenant, or other document in a form reasonably acceptable to Town Counsel that shall be recorded at the Registry of Deeds or the Land Court. Age and occupancy restrictions shall

not preclude reasonable, time-limited guest visitation rights or accommodation for caretakers for the primary resident. The age and occupancy restrictions shall be enforceable solely against the violating unit and not the development as a whole, by the owner of one or more dwelling units or by the Town of Brookline. In the event of a violation, and at the request of the Town, the owner of the unit shall comply with the age and occupancy restrictions.

2)3) All applications for new structures, outdoor uses, and exterior alterations in the Emerald Island Special District which exceed a floor area ratio of 1.0, a height greater than 40' and/or seek alternative parking and loading zone requirements shall be permitted only on lots greater than 13,600 square feet in contiguous area and only for the uses described in ~~Section 5.06.4.j.3~~ **Section 5.06.4.j.4**, shall be subject to Site Plan Review by the Planning Board as described in ~~Section 5.06.4.j.4~~ **Section 5.06.4.j.5**, shall be subject to the requirements of **Section 5.09**, Design Review, shall obtain a special permit per **Section 9.03**, and shall meet the following requirements:

a. Setbacks and Sidewalk Widths:

- i. All buildings shall be setback 10 feet from the mid-district drainage easement as shown in Figure 5.06.4.j.1 below.
- ii. All buildings shall be setback 45 feet from the Point of Intersecting Tangents of Brookline Avenue and River Road as shown in Figure 5.06.4.j.2 below.
- iii. Notwithstanding **Section 5.01** and other than as provided in ~~Sections 5.06.4.j.2a.i~~ **5.06.4.j.3.a.i** and ~~5.06.4.j.2a.ii~~ **5.06.4.j.3.a.ii**, there shall be no additional setback requirements except as is necessary to achieve the required sidewalk widths for the district. For the purposes of the EISD only, sidewalk shall be defined as the area between the building facade and the face of the curb. The required sidewalk width shall be measured from the ground level of the proposed building facade to the face of the curb at the time of special permit application. All sidewalks shall maintain a minimum 5 foot wide walkway clear from all obstructions, including, but not limited to tree pits, structural columns and street furniture. The minimum sidewalk width along Brookline Avenue and River Road shall be no less than 12 feet. The minimum sidewalk width along Washington Street shall be no less than 10 feet.
- iv. Where it can be demonstrated that achieving the required sidewalk width would be infeasible in limited areas, the Board of Appeals may by special permit reduce the required width of the affected areas to no less than 8 feet on Washington Street and River Road. No relief may be granted for a reduction in sidewalk width along Brookline Avenue. Applicants for a special permit to reduce the width of a sidewalk shall provide written and graphic documentation to the Planning Board illustrating why the required width is not attainable in the affected area. The Planning Board may in an affirmative and written determination make a recommendation

to the Board of Appeals to reduce the width of the sidewalk in limited areas. Where relief is granted, applicants shall provide counterbalancing amenities in the form of wider sidewalks and/or landscaping on-site or in the immediate area adjacent to their site, subject to the review and approval of the Planning Board.

## BROOKLINE AVE

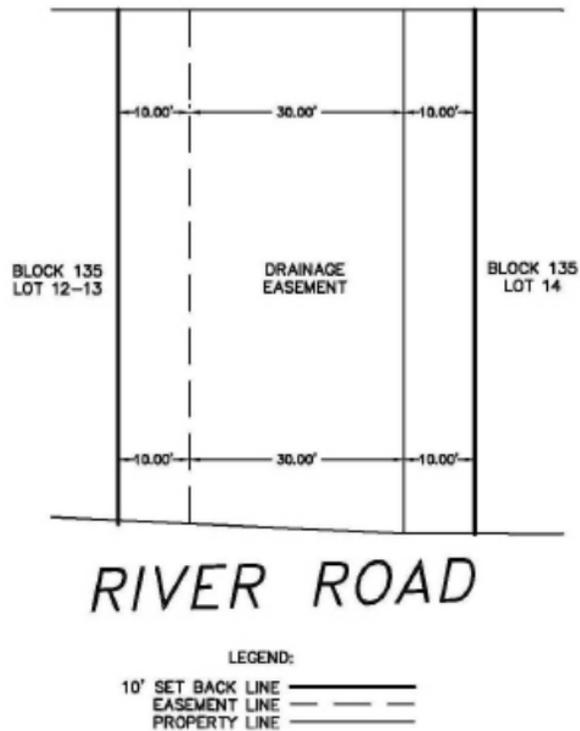
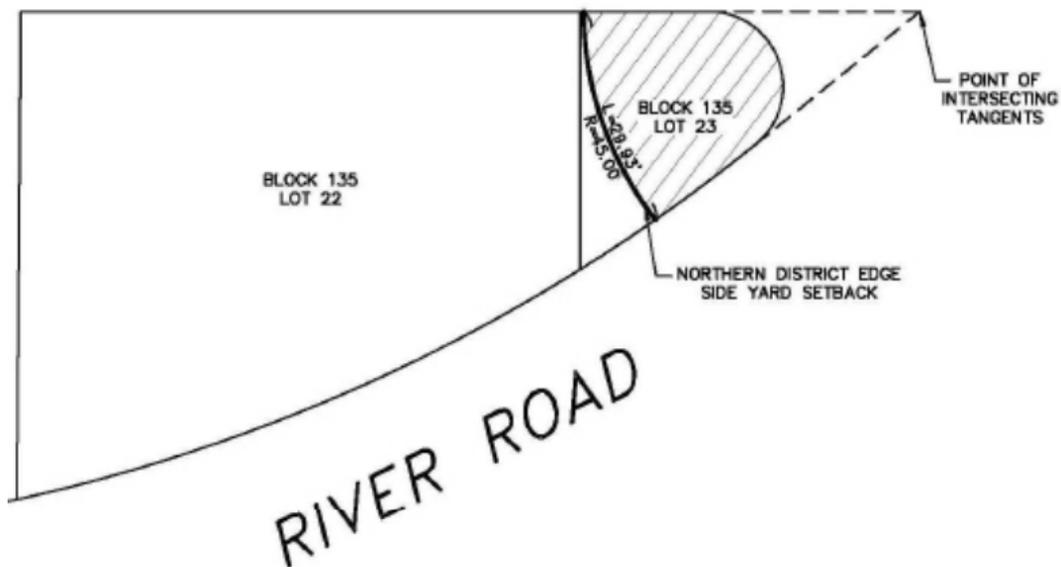


Figure 5.06.4.j.1 Setbacks from Mid-District Drainage Easement

# BROOKLINE AVE



**Figure 5.06.4.j.2 Northern District Edge Sideyard Setback**

- b. The minimum finished floor to floor height for all ground floor levels shall be no less than 15 feet.
- c. No permanent on-site parking spaces shall be located on the ground level in the Special District.
- d. All new buildings and renovations to existing buildings shall be LEED Silver Certifiable or higher. Applicants shall provide evidence to the satisfaction of the Building Commissioner and Director of Planning and Community Development that all new construction and renovations of existing buildings are LEED Certifiable Silver or a higher rating via the provision of a LEED scoring sheet. The construction or renovation of such buildings consistent with these plans shall be confirmed prior to the issuance of a Certificate of Occupancy.
- e. Street trees shall be provided at regular intervals approximately every 25 feet along the sidewalks of Brookline Avenue, Washington Street and River Road. The size, location and species of all trees at the time of planting and the final design of all landscaping in the public way shall be approved by the Director of Parks and Open Space or his/her designee. In circumstances where trees cannot be provided as stipulated above as determined by the Director of Parks and Open Space or his/her designee, the applicant shall provide an equivalent amount of trees and/or landscaping at appropriate locations on the site or make a financial contribution to the Town in an equivalent dollar amount for similar improvements in adjacent parks and public spaces.
- f. The applicant shall devote no less than 1% of the hard construction cost of

constructing its project, (including any building, site work, above ground or underground structures, but exclusive of tenant fit-up) to making off-site, streetscape and parks improvements within 500 feet of the Special District boundaries. In addition to review by the Planning Board, a plan of the proposed off-site improvements shall be submitted for the review and approval of the Director of Transportation and the Director of Parks and Open Space or their designees. Alternatively, with the approval of the Director of Transportation and the Director of Parks and Open Space, the applicant may make a financial contribution to the Town in an equivalent dollar amount to be used by the Town for such purposes.

- g. Public seating and pedestrian-scale lighting shall be provided at regular intervals. The location, number and design of all seating and lighting in the public way shall be approved by the Director of Parks and Open Space or his/her designee.
- h. Notwithstanding the provisions of **Sections 6.06.6** and **6.07**, the number and size of required loading zones may be reduced in accordance with Site Plan Review as noted in **Section 5.06.4.j.4** **Section 5.06.4.j.5** below.
- i. A building shall not have more than 30% of its frontage along a street devoted to residential use including associated lobby use.
- j. Any proposed building shall be permitted to have more than one principal use. For example, a restaurant or retail business may be located in the same building as a permitted residential, or office, or hotel use without being considered an accessory use.

**3)4) Exceptions to Maximum FAR and Maximum Height**

- a. Additional height may be granted by special permit up to 85 feet for buildings primarily containing Micro Unit Dwellings, Age Restricted Dwellings or only the following uses: 6B (Dwelling, Live/Work Space); ~~6C (Dwelling, Age Restricted); 6D (Dwelling, Micro Unit)~~ 8 (Hotel); 8A (Limited Service Hotel); 20 (Medical Office); 21 (Professional Office); 29 (Store less than 5,000 SF), 30 (Eating Place less than 5,000 SF); 33 (Stores not exceeding 10,000 SF); 33a (Stores over 10,000 SF); 34 (Place for the sale and consumption of food and beverages exceeding 5,000 SF); 66 (Accessory Laboratory), only for buildings located a minimum of 189.12 feet from the intersection of Washington Street and Brookline Avenue, provided that the footprint of any building mass above a height of 65 feet covers no more than 55% of the lot area. Buildings may also contain Principal Uses 18A (Small Group Health/Fitness), 20a (Licensed Veterinarian), and 32 (Service Business) provided that such uses occupy no more than 25% of the building. The required 189.12 foot distance from the intersection of Washington Street and Brookline Avenue shall be measured from the Point of Intersecting Tangents as show in Figure 5.06.4.j.3 below.
- b. Additional height of up to 110 feet may be granted by special permit for buildings containing only the following uses: 8 (Hotel) and 8A (Limited Service Hotel) and only for buildings with frontage on Washington Street provided that

the footprint of any building mass covers no more of the lot area than is specified in Table 5.06.4.j.1 and as depicted in Figure 5.06.4.j.4 below. Where an applicant can demonstrate that additional lot coverage for any building mass above 35 feet would result in an improved building design, the Board of Appeals may by special permit grant an increase in the maximum percentage of lot coverage as shown in Table 5.06.4.j.1 below. Applicants for a special permit to increase the maximum percentage of lot coverage shall provide written and graphic documentation to the Planning Board and Design Advisory Team illustrating how the building design has improved. The Planning Board may in an affirmative and written determination make a recommendation to the Board of Appeals to increase the maximum percentage of lot coverage as shown in Table 5.06.4.j.1 below. The Design Advisory Team shall provide a similar affirmative written recommendation.

**Table 5.06.4.j.1 Maximum % Lot Area Coverage by Building Height**

<b>Building Mass Heights</b>	<b>Maximum % Lot Area Coverage</b>	<b>Maximum % Lot Area Coverage By Special Permit with Planning Board Recommendation</b>
0 up to 15'	80%	N/A
15' up to 35'	92%	N/A
35' up to 50'	80%	85%
50' up to 75'	75%	80%
75' up to 110'	50%	55%

**4)5) Site Plan Review**

- a. All applications for new structures shall be subject to site plan review by the Planning Board to: ensure that there is adequate provision of access for fire and service equipment; ensure adequate provision for utilities and storm water storage and drainage; ensure adequate provision of loading zones; ensure adequate provision of parking; minimize impacts on wetland resource areas; minimize storm water flow from the site; minimize soil erosion; minimize the threat of air and water pollution; minimize groundwater contamination from on-site disposal of hazardous substances; maximize pedestrian and vehicle safety; screen parking, storage and outdoor service areas through landscaping or fencing; minimize headlight and other light intrusion; ensure compliance with the Brookline Zoning By-Laws; maximize property enhancement with sufficient landscaping, lighting, street furniture and other site amenities; minimize impacts on adjacent property associated with hours of operation, deliveries, noise, rubbish removal and storage. All plans and maps submitted for site plan review shall be prepared, stamped, and signed by a Professional Engineer licensed to practice in Massachusetts.

Pursuant to the site plan review process, applicants shall provide to the Planning Board and the Director of Engineering a site plan showing:

- i. Property lines and physical features, including roads, driveways, loading areas and trash storage for the project site;
- ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting and exterior lighting.

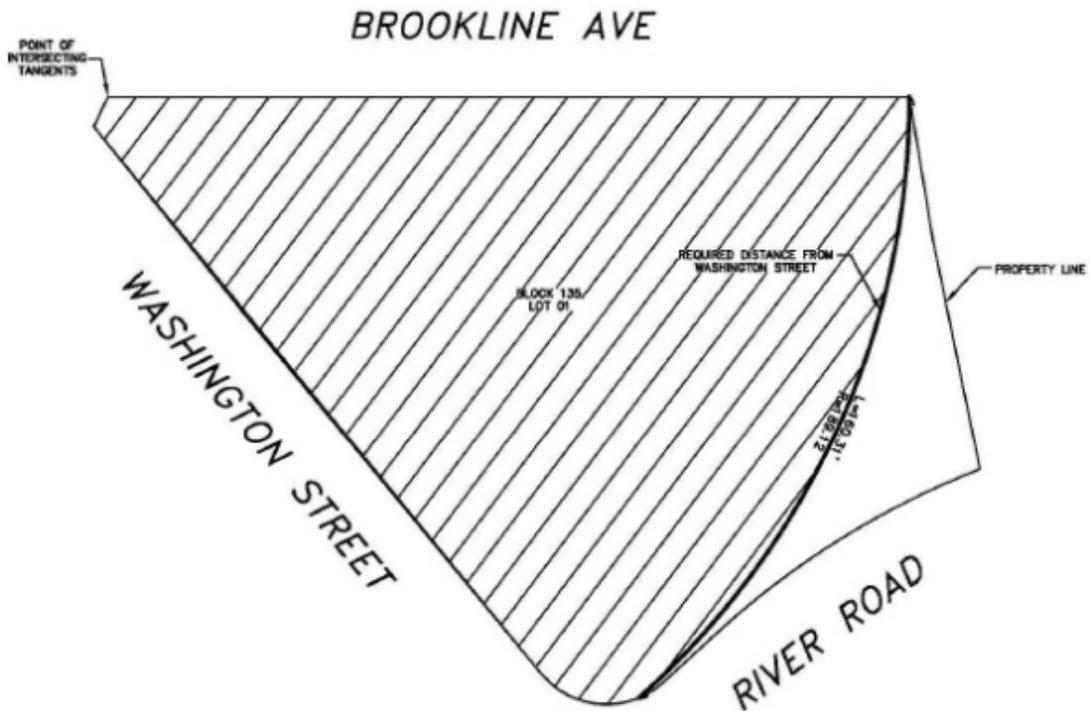
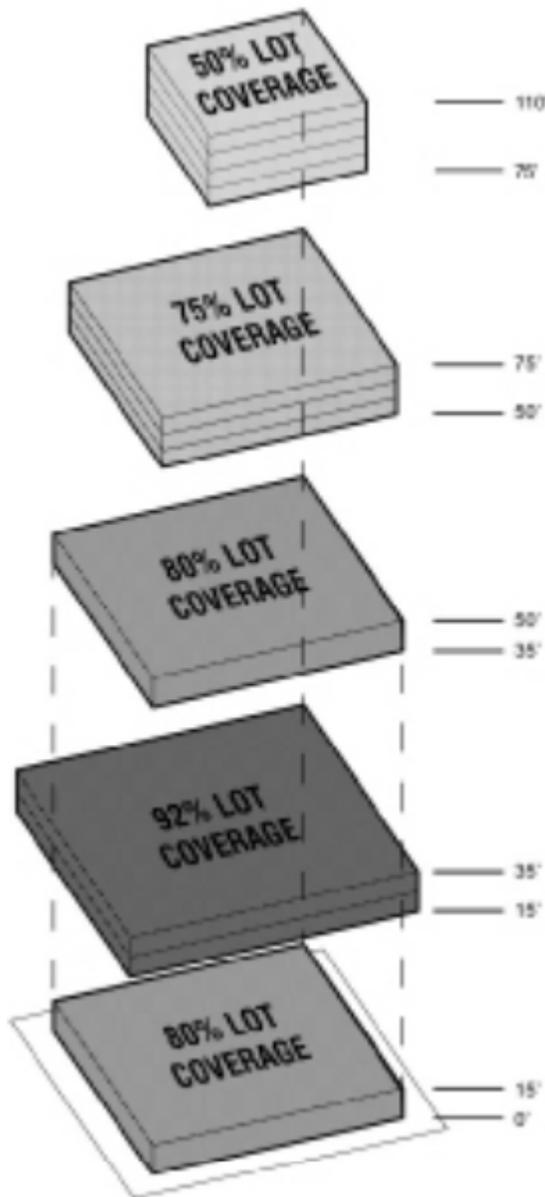


FIGURE 5.06.4.j.3 Required Distance from Washington Street



**FIGURE 5.06.4.j.4 Maximum % Lot Coverage by Building Height**

5)6) Parking and Vehicular Requirements:

a. Notwithstanding **Section 6.02**, there shall be no minimum parking requirements for the following uses

and such uses shall have the maximum parking limits noted in Table 5.06.4.j.2 below.

- b. Notwithstanding the above, where it can be demonstrated that additional parking is needed, the Board of Appeals may by special permit increase the maximum parking ratio by no more than 20%. Applicants for a special permit to increase the maximum parking ratio shall provide written documentation to the Planning Board demonstrating the need for additional parking. The Planning Board may in an affirmative and written determination make a recommendation to the Board of Appeals to increase the maximum parking ratio by no more than 20%.
- c. Notwithstanding the above, dedicated spaces for Car Sharing Organizations (CSO)

may be provided without regard to such maximum parking limits. If such dedicated parking spaces are not leased by any CSO they shall be dedicated to bicycle parking and appropriate bicycle parking hardware shall be provided.

**Table 5.06.4.j.2 - Maximum Parking Limits**

USE	MAXIMUM PARKING
<del>Principal Use 6B (Dwelling, age restricted)</del> <u>Age Restricted Dwelling</u>	1.25 per unit
Principal Use 6CB (Live/Work space)	0.50 per unit
<del>Principal Use 6D (Dwelling, Micro Unit)</del> <u>Micro Unit Dwelling</u>	0.50 per unit
Principal Use 8 (Hotel) and 8a (Limited Service Hotel)	0.40 per room
Principal Uses:	
18A (Small group health/fitness); 20 (medical office); 20a (Licensed veterinarian); 21 (professional office); 29 (store less than 5,000K SF); 30 (Eating places less than 5,000K SF); 32 (Service use business); 33 (Stores not exceeding 10,000K SF); 33a (Stores over 10,000K SF); 34 (Place for sale and consumption of food not exceeding 5,000K SF); 66A (Accessory Laboratory)	1.50 per 1,000 SF

6) 7) Design Standards:

- a. Building facades parallel to or within 45 degrees of parallel to any property line shall be designed and constructed with equal care and quality. Visual articulation shall be achieved for each facade by (a) employing variations in materials and/or ensuring that no portion of any such facade is coplanar or unbroken for more than 3,500 square feet without a change in depth of 2 feet or more, or (b) utilizing alternative methods of vertical or horizontal articulation, or (c) utilizing other design elements that, in the affirmative and written determination of the Design Advisory Team provide equivalent or better visual relief with respect to building massing, for the reasons expressed in such written determination. The Planning Board and the Board of Appeals shall provide a similar written determination and reasons with respect to facade design. During their review of all proposed building designs, both the Design Advisory Team and Planning Board shall consult the Emerald Island Special District Design Guidelines developed by the River Road Study Committee for guidance on general exterior massing, scale and design.
- b. In order to minimize visual and audible impacts, all rooftop mechanical equipment shall be insulated and screened to the greatest extent possible from all public ways via substantial screening materials and/or shall be located in the interior of the building. Additionally, all rooftop mechanical equipment shall be located such that all shadow impacts are minimized.