The Planning and Regulation Subcommittee of the Advisory Committee held a public hearing on October 2, 2019, in the Denny Room of the Public Health Building, to discuss and possibly vote upon Warrant Article 15, submitted by Linda Olson Pehlke, TMM Precinct 2, and Paul Saner, TMM Precinct 13. Attending were P&R Subcommittee members Steve Kanes, Chair, Ben Birnbaum, Carol Levin, Lee Selwyn, Carlos Ridruejo, and Neil Wishinsky; both Petitioners; Kara Brewton, Economic Development Director, and Meredith Mooney, Economic Development & Long-Term Planner; also attending were members of the public (see attached sign-in sheet).

**SUMMARY**

Warrant Article 15 seeks to remove minimum parking requirements for most commercial store front uses within the Transit Parking Overlay District (TPOD) to be replaced with maximum parking requirements that are equivalent to the current town wide minimum requirements for these same storefront uses. The TPOD encompasses essentially all of North Brookline and significant portions of South Brookline.

The Subcommittee is of the view that Warrant Article 15 represents a worthy goal of removing arbitrary minimum parking requirements for most commercial store front uses within the TPOD, but believes that the introduction of equally arbitrary maximum parking limits is not necessary and may have costly unintended consequences. The Subcommittee recommends FAVORABLE ACTION on Warrant Article 15, as amended to remove the introduction of maximum parking limits.

**BACKGROUND**

The TPOD is defined by a zoning map that includes all parcels within 0.5 miles of a Green Line transit stop. The TPOD was adopted in 2016. The purpose of establishing the TPOD was to better align Brookline’s residential parking requirements with household vehicle ownership and travel behavior as well as achieving better alignment with historic land use patterns within areas served by public transportation.

Petitioner’s warrant article provides in full as follows:

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.

PUBLIC COMMENT

Following the presentation by Petitioners, there was input from members of the public, which focused almost exclusively on the negative consequences of the minimum parking requirements that are presently in effect.

DISCUSSION

Warrant Article 15 is really two separate warrant articles rolled into one. One part is the elimination of minimum parking requirements and the second part is the setting of maximum parking requirements in place of the existing minimum requirements in the TPOD, using the same number of parking spaces as maximums that were once used as parking requirement minimums. The Subcommittee discussed each part separately as follows:

Minimum Parking Requirements

Petitioners argue that compact, walkable neighborhood commercial areas succeed because of their transit access, shared public parking resources, dense neighborhoods within walking and biking distance, and the juxtaposition of multiple civic, shopping and entertainment destinations. The fact that buildings devoted to store front uses in these areas were built prior to the advent of minimum parking requirements for such uses, and therefore do not have on-site private parking contributes to the compact, inviting, pedestrian-friendly commercial areas that we have in the Town. Requiring a minimum amount of on-site private parking for new commercial projects or for a change of use within our existing storefronts limits economic activity. In addition, meeting such requirements is often not possible or desirable if we wish to maintain our historical and current land use patterns and walkable accessibility. Petitioners also argue that the numerical minimum requirements in the Zoning Bylaw are arbitrary and unreasonable, and that there was no evidentiary basis for continuing them. The Subcommittee agreed on all counts and concluded it was time for these minimum requirements to be eliminated as proposed in WA15 and did not spend significant time reaching that conclusion.
Maximum Parking Requirements

Petitioners argue that maximum parking standards for businesses in mixed-use, transit-oriented districts make sense because parking in excess of what is actually needed could invite automobile trips that would otherwise be shifted to transit, walking, bicycling, or carpooling. Petitioners further argue that in Brookline, the current town wide minimum parking requirements represent a reasonable set of maximum requirements for storefront uses within the TPOD; and, that from a zoning perspective, these requirements have already been deemed to provide adequate parking capacity for businesses located anywhere in Town, including those that lack proximity to Green Line stops or shared parking resources.

The Subcommittee was of the view that Petitioners did not make a credible argument to set maximum parking requirements in the TPOD as proposed by WA15 as the new proposed maximums are not the result of a careful parking needs analysis. While the Subcommittee believed that removing the parking minimums preserved and protected the street experience, a similar beneficial argument was lacking with respect to setting parking maximums.

Economic Development. One of the Petitioners freely admitted that a developer would not invest in parking that was not required by zoning, and certainly not in dense urban sectors of the Town, unless there was a real business reason to do so. The Subcommittee concluded that setting maximum parking requirements was principally a messaging device about reducing the carbon footprint despite the fact that Petitioners envision a day when all vehicles will be electric. The Subcommittee was also of the view that the principal area where a developer might wish to exceed the proposed maximum requirements would be along Route 9, parts of which are in the TPOD, and not in settings like Coolidge Corner and Brookline Village where the cost would be prohibitive.

Other Overlay District Experience. Petitioners also state that almost all of our recent overlay zoning districts have removed minimum parking requirements for commercial uses and have capped the number of parking spaces allowed by including a maximum number of parking spaces. These districts (possibly only 3) involved negotiated transactions where there was a thorough and comprehensive analysis of parking needs at specific locations and where the developer was seeking significant zoning relief, whereas Warrant Article 15 would apply to all development across most of the Town.

Unintended Consequences. The Subcommittee was also concerned about unintended consequences. One example that was raised was the possibility of a parcel owner that wished to develop or change the use of an existing building with parking already in place that exceeded the proposed maximum limits. Would such owner be required to remove existing parking? According to the Economic Development Director, a substantial addition to an existing building or a change in use with different parking requirements could require the removal of existing parking. Subsequent to the Subcommittee’s hearing, Petitioners apparently proposed an amendment to address this unintended consequence, but we have now been advised that Town Counsel is taking the view that such a prior use would be grandfathered and that an amendment to the warrant article is unnecessary. Nevertheless, this example illustrates the problem of moving too quickly in complicated zoning matters.
Special Permits. Also subsequent to the Subcommittee’s hearing, EDAB has proposed an amendment to WA15, which has been adopted by the Planning Board, that would permit an applicant to seek a special permit from the Zoning Board of Appeals to exceed the maximum parking requirements based upon a parking demand analysis provided by the applicant using a methodology approved by the Director of Transportation & Engineering. Of course, this means an expensive parking analysis and the hiring of consultants, engineers and attorneys, and costly and time-consuming hearings in front of the Planning Board and the ZBA, with a very uncertain outlook, which in itself is likely to inhibit development, especially for a small project.

Methodology of Convenient Substitution. Even if one were to hypothetically accept the concept of imposing maximum parking requirements, the ratios proposed by the Petitioners are not credible. Petitioners have stated that they believe that the current minimum parking requirements are arbitrary and unreasonable yet found these same exact same numerical requirements “represent a reasonable set of maximum requirements for store front uses.” We were assured, without any evidentiary support, that “it is reasonable to expect that businesses within the TPOD would not need more parking.” Petitioners argue that traditional minimum parking requirements are based on outmoded planning and engineering concepts, but we were also told that these exact same ratios make sense as maximum requirements, without any analysis or evidence presented. It would appear that this numerical transmutation is nothing other than a methodology of convenient substitution and is not supported by any data or logic.

TPOD
As an aside to the Planning and Community Development Department, the Subcommittee noted that there was no definition of the TPOD in the text of the Zoning Bylaw although there is a reference to it by name in Sections 3.01 and 6.02. Technically, the TPOD is defined by a zoning map that is part of the Bylaw. The Subcommittee urged the Department to file a housekeeping warrant article to reference the map in Section 3.01 so that someone searching the Bylaw would be able to find the TPOD boundaries more easily. The Subcommittee was advised that the Assistant Director for Regulatory Planning intends to propose such an amendment to the Bylaw.

RECOMMENDATION

The Subcommittee is of the view Petitioners have a made a persuasive case for adoption of W15, subject to removing maximum parking requirements for commercial storefront uses from the proposed warrant article. The Subcommittee believes that removing the minimum requirements for storefront uses is a major directional change in our zoning without the unintended consequences inherent in setting maximum parking requirements based upon the questionable replacement of arbitrary minimum requirements with arbitrary maximum requirements, using the same numerical ratios. The unintended consequences include possibly inhibiting needed development in areas of the Town where it is appropriate, such as Route 9, with no clear benefit other than messaging. Using the special permit process is costly and time consuming, and creates unnecessary uncertainty. Setting maximum parking requirements would be yet a further directional change in our zoning. While that change may be desirable, it should be proposed only after a study of what maximum parking ratios make sense for our commercial storefront
uses. The Subcommittee believes that it is prudent to move incrementally after solid analysis and not act arbitrarily.

The Subcommittee recommends that the text of WA15 be amended as follows (additions are denoted in bold, italicized text, deletions are denoted in stricken text):

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 be 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 1–7 contain additional requirements by type of use and by location.

Or act on anything relative thereto.

SUBCOMMITTEE ACTION:

By a vote of 6-0-0, the Planning and Regulation Subcommittee recommends FAVORABLE action on Warrant Article 15, amended and revised as follows:

Voted: That the Town 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 not be 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 1-7 contain additional requirements by type of use and by location.
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