

10/10/23

TOWN OF BROOKLINE
ADVISORY COMMITTEE
LAND USE, ZONING AND SUSTAINABILITY SUBCOMMITTEE

**Article 6: Amend the Zoning Map to change three lots on Mason Terrace
from an SC-7 District to an M-1.5 District**

Recommendation: NO ACTION by a vote of 3-1-0.

<p>Executive Summary:</p>	<p>WA 6 seeks Town Meeting approval to “upzone” three existing lots on Mason Terrace – Nos. 99, 111 and 117 -- from an SC-7 District to an M-1.5 District. M-1.5 currently exists on both sides of and behind the three lots, while the lots about S-7 and SC-7 lots across the street. An SC-7 District is a single-family district that permits conversion of a single-family dwelling to a 2-family dwelling. The minimum lot size is 7,000 square feet, with a maximum Floor Area Ratio (“FAR”) of 0.5 for converted buildings. An M-1.5 District is a multifamily district with no minimum lot size for buildings with 3 or more units and an FAR of 1.5. It also provides for smaller setback requirements than for SC-7 zoning.</p> <p>Primary petitioners are owners of the property located at 99 Mason Terrace. The lot size is 13,440 square feet, with an existing two-family dwelling with a total livable floor area of 5,023 square feet. According to the Petitioners’ Explanation (at p. 54), “[t]he primary petitioners desire to support the move of their son and new daughter-in-law to Brookline by allowing the couple to build an additional dwelling on [what they describe as] an oversized lot.” They describe the current zoning as “abnormal and restrictive” and state that they have been advised by Planning Department staff that zoning relief is unlikely to be granted and that their best alternative is to seek this zoning amendment.</p> <p>Permitting of the added unit would not be automatic if the zoning change were adopted, as site constraints would likely necessitate additional zoning relief. And while the proposed zoning amendment would open the way toward adding a third unit, it would in fact allow a much bigger building on the lot – with a gross floor area of 20,160 SF and perhaps 15-20 apartments. It would also allow larger buildings at 111 and 117 Mason Terrace.</p>
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Voting Yes will...	Result in substantial upzoning of the three parcels, permitting potential construction of as many as three multifamily buildings with a combined floor area of about 45,000 square feet, containing as many as 40-50 individual apartment units, without providing any assurance that the specific plans being proffered by the Primary Petitioners will actually be pursued or will not be replaced by such substantially denser construction at some point in the future.
Voting No will	Retain the existing SC-7 zoning.
Financial impact	According to the Assessor, the upzoning by itself will not affect the <i>assessed</i> value or taxes for these three properties. However, increasing the allowable square footage by a factor of 3 will likely increase the resale value of the properties. Any new construction or redevelopment of these properties would result in reconsideration by the Assessor, increased tax revenue, and associated increased demand for town services (police, fire, schools, etc.). If the Petitioner simply builds the one new single-family dwelling on #99, some additional tax revenue would presumably be forthcoming. If one or more of these parcels are developed to their maximum allowed multifamily density, there would be additional tax revenues, but these would be offset by additional costs to the Town for schools, public safety, public works and other Town services. Petitioners have offered no estimate as to the net fiscal impact, positive or negative, of the proposed upzoning.
Legal implications	Approval of WA6 would not have legal implications or set any legal precedent but it would provide a policy precedent that could be cited in an attempt to influence Town Meeting in the future to pass other similar rezoning proposals for such essentially private or single-parcel zoning changes that might be introduced in future Town Meetings. While future Town Meetings are certainly not bound by such actions here, the fact that relief of this sort had been allowed could be advanced in future Town Meetings as a basis for similar types of private single-party relief. As one member of the subcommittee put it, Town Meeting is not the Zoning Board of Appeals.

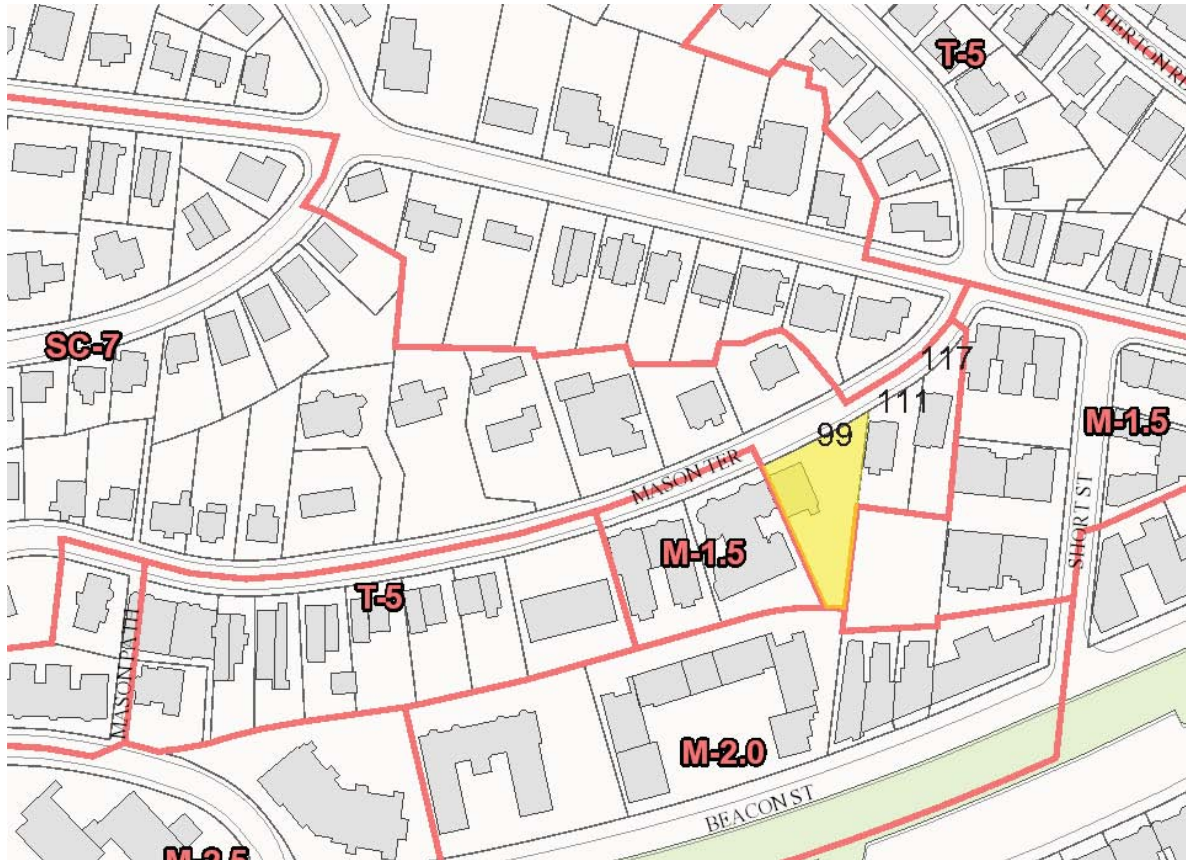
Introduction

Petitioners are seeking to construct an additional small single-family home (in the size range of 1,600 to 2,000 square feet) at the rear of the existing 99 Mason Terrace parcel. SC-7 zoning would not permit the construction of an additional dwelling of this sort. Accessory Dwelling Units (“ADUs”) are not allowed at two-family dwellings, and are limited to a much smaller size. Petitioners have not sought zoning relief through the usual process of applying to the Zoning Board of Appeals, stating that they have been advised that they would be unlikely to be able to obtain a variance to permit such construction. Changing the zoning to M-1.5 would eliminate the existing barriers to the project the Petitioners have in mind. It should also be noted that a

lesser upzoning to allow for an additional unit, such as changing the zoning to an F (three-family) or M 1.0 (Multi-family with a 1.0 FAR) would achieve the allowance of an additional unit, but were apparently not pursued by the Petitioner because of their desire for a second, stand-alone house.

The proposed M-1.5 zoning would permit substantially greater density and bulk than the petitioners have in mind for their relatively modest project. Polly Selkoe, Director of Regulatory Planning for the Town of Brookline, advised the Subcommittee in a September 29, 2023 memo that included a sketch from Steve Heikin, Chair of the Planning Board, who had advised that “a multi-family building of approximately 15 to 20 units would be possible [on the 99 Mason Terrace lot] by special permit. The allowed floor area for this 13,440 s.f. lot would be 20,160 s.f., and the building might be 3 to 4 stories, given the 45-foot height limit and that the property is sloped. There could be below grade parking with approximately 13 spaces. Ms. Selkoe noted that since the site slopes significantly down from the street (which she has estimated to be at least a 30' difference in elevation from front to back of the street frontage), a driveway from the street to the lower level is possible. She estimated that “[t]here could be four units per floor (large one bedroom or moderate two bedroom) and one at 1350 s.f. (three or four bedroom). Entry lobby/amenity space might necessitate eliminating one unit in either scheme.” Polly Selkoe noted that “the owner’s representative [for WA 6] states that what he wishes to do is build a single family for himself behind the existing two family, which has two units – one occupied by his parents and the other by his aunt and uncle. However, once zoning is changed [to M-1.5] a future alternative scenario is always possible.”

The figure below, which is an extract from the Assessor’s zoning map covering the Mason Terrace area, highlights the three parcels in question and the zoning applicable in adjacent areas. As can be seen, the parcels form a part of an SC-7 zone that otherwise sits on the opposite side of the street. M-1.5 districts abut the three lots to the back and sides.



Discussion

The Land Use, Zoning and Sustainability Subcommittee of the Advisory Committee held a public hearing followed by a public meeting on Monday, October 2, 2023 at 7:00 p.m. via Zoom to review, discuss and possibly vote on Warrant Article 6. Subcommittee members present were David Pollak (Chair), Katherine Florio, Linda Olson Pehlke and Lee Selwyn. Not present were Subcommittee members Carlos Ridruejo, Kelly Hardebeck and Markus Penzel. Also in attendance were Town Staff Polly Selkoe, Director of Regulatory Planning, and Jonathan Simpson, Associate Town Counsel, as well as the Primary co-petitioners David Pomeranz, Kathy Young, Anny Young Rice and Jacob Meskin, and co-petitioners Shira Fischer (TMM/11) and Lisa Shatz (TMM/11). Appearing for the Primary petitioners was Max Pomeranz, who is not currently a resident of Brookline but who, with his wife, would occupy the proposed new house. Also present were several Members of the Public. The recording of the hearing may be accessed here:

https://brooklinema.zoomgov.com/rec/share/ArXRUpXMheM8Dk5337yGTfWD_EtecyICGsBplh-ueHi1_8Nuw6N616BoIae0CMoY.uEGbtpdEFMEVJ4Jf

The petitioners noted that they have been reaching out to neighbors and abutters and that WA 6 is currently supported by 11 P11 Town Meeting Members and by residents at 71, 94, 106, 111, and 118 Mason Terrace. It was unclear, however, as to whether the identified neighbors had been made aware of the full scope of the potential impact of the proposed M-1.5 upzoning on the potential for construction of one or more multifamily buildings on these parcels.

There was a detailed discussion of the alternative of subdividing the property into two lots and seeking a variance as well as special permit relief to retain the existing building on a front lot and build the additional unit on the back lot. Hypothetically, the front lot might be drawn as 7,000 SF, making it sized to meet the minimum SC-7 lot size. Relief would be sought for the undersized 6,440 SF back lot. The problem would be that the 7,000 SF front lot would only allow a 3,500 SF building under the allowable 0.50 FAR, whereas the existing building has a gross floor area of 5,023 sq. ft. made up of 4,320 of Living Area plus 773 SF of Finished Basement. It is the opinion of Polly Selkoe that this would create a condition known as “infectious invalidity” where the existing building would be changed to a non-compliant FAR of 0.72 and would not be granted by the ZBA. The following figures were not specifically discussed at the subcommittee meeting, but are being included here for the purpose of explaining how “infectious invalidity” operates. Thus, at a 0.50 FAR, the 5,023 SF of livable space would require a minimum lot size of 10.046. The excess of 10,046 over the 7,000 sq. ft. of the “front lot” – i.e., 3,046 sq. ft. -- would, under the doctrine of “infectious invalidity,” require that the 6,440 sq. ft. of the “back lot” be reduced by this amount, leaving only 3,394 sq. ft. available, or less than half of the minimum 7,000 sq. ft. SC-7 lot size.

While all members of the Subcommittee who were present at the hearing were sympathetic to the Petitioners’ objectives and their desire to provide a housing opportunity for members of their extended, multigenerational family with longstanding ties to Brookline, several members expressed serious misgivings about the appropriateness of a zoning change of this type and its broader implications. It was pointed out that approval of a variance typically affects only the subject property and can be limited to the specific parameters of the construction being proposed, whereas upzoning of this type creates the potential for permanent and far-reaching impacts that, in this case, are not even confined to the Petitioners’ property but would apply to two adjacent parcels (nos. 111 and 117) as well. (The owners of those two properties have not sought or requested the SC-7 to M-1.5 zoning change.) Upzoning 99 Mason Terrace to M-1.5 would confer substantial additional value on this parcel, and that could create an incentive for sale and redevelopment rather than the currently contemplated preservation of the existing two-family home with the addition of a “back house” that would be hidden from the street. While no specific values were discussed at the meeting, several subcommittee members undertook to obtain order-of-magnitude estimates of the potential value following the meeting. This included discussions with a former AC member involved for many years in the rental housing business as well as with EDAB, which had commissioned a study in connection with the current Harvard Street/MBTACA rezoning discussions. With the potential to support somewhere in the range of 15 to 20 housing units and based upon current market conditions in Brookline, such a parcel could well have a market value between \$3- and \$10-million (i.e., between \$160,000 and \$500,000 per housing unit that could be built thereon). Notwithstanding the Petitioners’ plans as described to the Subcommittee, an unsolicited offer in this price range from a potential developer to the current owners might well be difficult for the Petitioners to resist.

The Petitioners have described the current zoning as “abnormal and restrictive” and suggest that the existing 13,440 square feet land areas is “oversized” for the existing 5,023 sq. ft. house. When FAR and infectious invalidity are considered, the existing lot is not particularly “oversized” for the existing house. In an SC-7 District, the minimum lot size is 7,000 sq. ft. The

maximum Floor Area Ratio for a single-family house in an SC-7 District is 0.35; for a converted 2-family house the FAR is 0.5. The existing converted 2-family house contains 5,023 sq. ft., which would require a minimum lot size of 10,046 square feet. That would leave 3,394 square feet more than the minimum lot size required for the existing house, which is 3,606 square feet (51.5%) *below* the minimum 7,000 square foot land area that would be needed to support a second house were the lot to be subdivided. (In fact, if the existing house had not been converted to 2-family, the required minimum lot size needed to support a 5,023 sq. ft. structure would be 14,351 sq. ft., which is actually about 1,100 sq. ft. more than the 13,440 square feet of the 99 Mason Terrace lot.)

There was some discussion as to whether the existing SC-7 zoning was in some manner “abnormal” for the three lots that are the subject of WA6. However, one member of the subcommittee noted that the nearby M 1.5 parcels, which are currently developed with apartment buildings, are in fact more suitable for this level of density due to their larger size, with enough flat land to accommodate larger structures. In contrast, the three parcels in question are oddly shaped, extremely steep and primarily built out. Petitioners argue that properties on either side of these three lots are already in M Districts. However, most of the parcels in the immediate area of these three lots – including all of the abutting properties on the opposite side of Mason Terrace -- are zoned SC-7 or S-7.

One Subcommittee member pointed out that, while these three properties are bounded by M-districts, there must always be a boundary somewhere, and that mere adjacency to a boundary is not a justification for altering the existing zoning. Such a policy would have the effect of creating “boundary creep,” which could then provide a rationale for any number of successive boundary shifts both in the immediate area as well as in other parts of town. The inclusion of the two additional parcels was motivated by the desire on the part of the main petitioner to avoid the appearance of spot zoning. The property owners at 111 and 117 were not in attendance, and at the time of the hearing the owner of #117 had not been reached and had not consented to being included. Those property owners have not expressed any desire to seek a zoning change for themselves.

Subcommittee members expressed the following concerns about the proposed zoning change:

- All subcommittee members present believe that the implications of approving the upzoning contemplated by WA6 needs to be made in full recognition of the potential development that such upzoning would permit, and not on the specific details of the modest project being proposed by the Petitioners.
- Subcommittee members expressed concern about the policy precedent that this would establish, inviting other individual property owners to propose upzoning of their lots to allow denser development. A member reiterated the opinion that decisions of this nature should be before the ZBA and not Town Meeting.
- A subcommittee member said that a zoning change of this magnitude requires additional study and should only be considered in the context of a broader review of all zoning in Brookline. The member expressed concerns regarding parking and traffic on Mason Terrace and adjacent streets that could result from the proposed upzoning, and suggested that further study – including traffic and parking studies – should be undertaken before such

upzoning should be considered. Petitioners suggested that such a traffic study would typically be conducted as part of Planning Board review.

- A subcommittee member noted that while the Petitioners' intended project would not change the streetscape, the altered zoning would allow a radical change in the streetscape and could encourage teardown and replacement of the existing dwellings.
- Concern was also expressed that, while the Petitioners indicated that they had notified, or attempted to notify, all abutters of the proposed warrant article, it was not clear from the discussion how many of these individuals had been made aware of the density implications of the upzoning as outlined in the Selkoe memo. No abutters were present at the meeting. It was suggested that Petitioners might want to provide statements from abutters as to their awareness of the potential for three new multi-story multifamily buildings to be constructed on these parcels, as well as the potential for an even larger building if the parcels were to be consolidated.

One Subcommittee member expressed the minority opinion in support of WA 6, making the following points:

- Having lived around the corner on Corey Hill for the past 27 years, I think part of the neighborhood's charm is its mix of different building types ranging from ranch houses to 13 story apartment buildings. There are similar buildings along Mason Terrace to what would be allowed under this change, and I think what would be allowed would fit in.
- The topography of these lots is not particularly different from other lots along the same side of Mason, and there is a level building site behind the existing house at basement level, where the garage now sits. So I don't see topography as a disqualifying factor for this proposal.
- I believe that the SC-7 designation of these lots was made for good reasons many decades ago, but that there are good reasons to reconsider that today, given the regional need for more housing, the proximity to transit, and even the pathway across the 99 parcel directly to the Green Line stop.
- Even though it is less than optimal for Town Meeting to be asked to consider individual small property owners' appeals for relief, it is also hard to imagine that this appeal would make its way to the forefront of the upcoming townwide comprehensive planning process. So I am not confident that it is reasonable to redirect the Petitioners to seek relief on that front. Addressing zoning reform piece-by-piece is a valid strategy, whereas taking everything on at once risks an overwhelming process that could be less effective.

Recommendation

The Subcommittee voted 3-1-0 to recommend NO ACTION on Warrant Article 6:

Florio	N
Pehlke	N
Pollak	Y
Selwyn	N

Documents made available for and/or presented at the meeting

- ARTICLE 6 – Zoning Mason Terrace
- ARTICLE 6 Petitioners’ Explanation
- Zoning Amendment Mason Terrace Max Pomeranz Presentation
- P.Selkoe Memo to Land Use Subcommittee WA 6
- Steve Heikin Sketch
- WA 6 Brookline Assessor response to question 9.21.23
- 99 Mason Area Assessors PrintableMap
- 99 Mason Terrace Assessors property card
- 111 Mason Terrace Unit 1 Assessors property card
- 111 Mason Terrace Unit 2 Assessors property card
- 117 Mason terrace Assessors property card