

Minutes

Brookline Commission on Disability
Wednesday, October 13, 2021; 5:30 PM – 7:30 PM
Meeting held via Zoom

Members in Attendance (Virtually): Jim Miczek, Acting Chair/Deputy Chair; Jim Lee; Henry Winkelman; Elaine Ober; Ann Kamensky; Joan Mahon; Miriam Aschkenasy, Select Board Member; Nancy Moore, Transportation Board Liaison

Members not in Attendance: Rob Heist

Note taker: Sarah Kaplan, ADA Coordinator – Ex. Officio

Members of the public in attendance: Bonnie Bastien, Mike Toffel, Michael Zoorob, David Trevvett, Elizabeth Schafer, Abby Swaine

Meeting commenced at 5:34 PM.

Introductions: All Commission Members and members of the public briefly introduced themselves to the presenters for the public hearings and other members of the public. All petitioners also introduced themselves.

September 2021 minutes: Tabled for next meeting.

Public Hearing on Warrant Articles 11 & 12: Bonnie Bastien led the presentation on Warrant Articles 11 and 12 as a pair. No visual presentation was provided. Warrant Articles 11 and 12 work together to provide audio visual accessibility for all public body meetings, subject to Open Meeting Law (OML) and to extend the option for fully remote participation in such meetings which would otherwise not be possible once Massachusetts Emergency OML Provisions expire on April 1, 2022.

Warrant Article 11 is a Home Rule petition seeking the State Legislature to exempt Brookline from the Massachusetts OML clause stipulating that public body meeting quorum requirements must be met by the Chair and other Members attending in person. The Home Rule petition would make it legally permissible, but not required for meetings of public bodies to be conducted fully remotely as has occurred during the COVID-19 emergency.

Warrant Article 12 is a resolution that asks the Town to acquire and install audio visual equipment in municipal conference and hearing rooms and conduct relevant training to enable audio visual remote participation for all meetings, subject to OML by November 2022. This timeframe for the resolution was decided upon in conversation with Town Staff around what is realistic for them. If both the Resolution and the Home Rule petition were passed and enacted Brookline public bodies would have discretion to decide which of its meetings would be hybrid

and which would be remote, but limiting meetings to only in person attendance would not be allowed.

The petitioner's rationale for these Warrant Articles is that COVID-19 OML Emergency Provisions have greatly increased access for residents to participate in local government both as voting members and members of the public. This access is essential and WA 11 & 12 seek to make this access permanent. This benefits residents who work multiple jobs, have inflexible hours, parents or caregivers, people who do not/cannot drive, people with health issues, and/or people with disabilities.

OML does carve out an exception for Commissions on Disability to allow for remote access, but an in-person quorum is still required. Such carve outs are not currently in OML for other groups. It is possible to run public meetings virtually and be efficient and successful. The petitioners would expect all public bodies to make the decision on how to meet on a case-by case basis. The petitioners see this as an access issue, and the solutions as an accommodation like curb cuts, or elevators.

Increased virtual only meetings would require the purchase of additional Zoom accounts by the Town. Hybrid Meetings would require the purchase of necessary equipment like cameras, monitors, laptops, and projectors and additional IT Staffing. Public bodies that have staffing could use that staff to activate and deactivate the technology. They suggest training for leaders of groups that do not have staff support and the hiring of two additional part-time IT staff to provide on-call assistance in person.

The cost top-end estimate is:

- \$160,000 for equipment installation and staff time for training (could be purchased with ARPA funds)
- \$70,000 for two additional Part-Time IT Staff (per year)

Public Comment:

- Jim M. asked about the time frame for the Warrant Articles? Bonnie said WA 12 has a deadline of November 2022. WA 11 does not have a deadline as they don't have control over the Home Rule petition process. Miriam explained that Brookline's State Reps would have to take the Home Rule petition to the State and that it is a long process.
- Miriam spoke about Select Boards hesitancy to add to the staff's work load and also about the hesitancy to add IT staff to address the access/IT working issues.
- The ADA Coordinator spoke about her concern that if the Town move forward on WAs 11 and 12 that the Town could eventually be out of compliance with Title II of the ADA. She clarified that in order for a COD to allow for virtual access, they still need an in-person quorum in a physical location. Also only allowing for virtual attendance in COD meetings separates the COD from all other public bodies of

- government and potentially only allows people with disabilities to participate in only COD meetings and essentially lock them out of other meetings in Town.
- Bonnie spoke about the Advisory Committee meeting version of WAs 11 & 12, which would soften them by only requiring a plan by November 2021.
 - Elaine asked if any other communities in MA or in New England are doing anything similar? Elaine also talked about how if everyone wants more diversity in their public bodies not to approve this is hypocritical. Bonnie talked about a state-wide effort to do this work, but it is slow.
 - Mike Toffel also talked about his surprise about the push back on WA 11 & 12. He encouraged members of this body to make a recommendation in the Combined Reports and possible testimonials to Town Meeting directly.
 - Joan talked about the need to bring pressure on this issue.
 - Henry wanted to write a letter on this issue. The ADA Coordinator offered to put the letter together if members have things they want to say.

Votes:

- Henry moved that the **members each send their opinions in favor of WA 11 & 12 to the ADA Coordinator who has permission to make them into a letter.** Jim L seconded. A roll call vote was taken. All members present voted in favor. Motion carries.
 - **Action:** Said letter will be sent to the Combined Reports and Town Moderator for Fall 2021 Town Meeting and posted to the BCOD website.
- Henry made a motion in **support of Petitioners version of Warrant Article 11.** Miriam seconded. A roll call vote was taken. All members present voted in favor. Motion carries 7-0-0.
- Henry made a motion in **support of Petitioners version of Warrant Article 12.** Elaine seconded. A roll call vote was taken. All members present voted in favor. Motion carries 7-0-0.

Public Hearing on Warrant Article 23: Michael Zoorob presented on Warrant Article 23. He shared a visual presentation on his screen and said that WA 23 has been changed in order to reconcile it with Warrant Article 24 from the planning board. The Warrant Article is about parking minimums for housing (apartments) in Brookline.

Currently parking minimums requires 1 parking space per studio; 1.4 parking spaces per 1 bedroom; 2 spaces per 2+ bedrooms. The American Community Survey says that between 2010 and 2019 the average household went from 1.25 vehicles to 1.1 vehicles. Vehicle ownership for renter household averaged around 0.75 between 2010 and 2019. Michael says we require so much more parking than renters actually have. About 30% of households do not have cars; about 50% of renters don't have cars; and about 60% of senior (65+) do not have

cars. Current parking minimums are not consistent with some resolutions the Town has adopted. Town Parking requirements encourage the building of smaller buildings by developers, thus limiting the number of accessible units.

The current adjusted WA 23 sets the new parking minimums to one space per unit and .5 spaces per studio. It would also allow the Planning Board and Zoning Board of Appeals to make additional changes to requirements on a case-by-case basis by special permit.

The ADA Coordinator asked Michael if the compromise Warrant Article included the 5% minimum of HP spaces to be maintained with current zoning laws. He said it did not because he said developers have to provide some HP parking according to 521 CMR even with the reduced requirements. He says this Warrant Article does not affect the parking for visitor spaces that this Warrant Articles does not change. He spoke about how he felt it was a balancing act to meet the needs of those who drive and need parking vs those that do not drive and don't need parking but end up paying for parking spaces. He also spoke about how he believes that Brookline's current parking zoning laws cause developers to build less units that are larger, then more units that are smaller.

Public Comment:

- Jim L spoke about how the requirement for HP parking is related to the number of overall parking spaces. If overall parking is reduced, HP parking is reduced. Michael confirmed that this would reduce the percentage of HP parking.
- Henry spoke about how he agrees the that our parking minimums are too high and he agrees with the new proposal for parking minimums but he wants to echo Jim Lee in his concern that any HP parking be reduced and he feels that the number should always be rounded up – so 2.3 HP spaces becomes 3 spaces not 2, in practice.
- Nancy Moore wanted to echo Henry and spoke about the increased need for parking options for people with disabilities and seniors who need care. Nancy suggested that one way to take in to account these needs is as you reduce overall parking, you increase the percentage of accessible (HP) spaces so they are not decreased at the same rate. She suggested that if no one needs an HP spot in the lot that it be open to others to use. She also asked about the special permit that the ZBA could choose to grant – what is to stop the ZBA from granting zero parking spaces and thus also having no accessible spaces. The ADA coordinator asked if a 40B project that had accessible units but no accessible parking or any parking at all, it would signal to a potential resident with a disability who may need that unit not to move their because there would be no parking for them or their caregivers. Michael said the Planning Board would be hesitant to grant a permit for a project with no accessible parking, but there may be a project where there is no room for a driveway or parking. The Planning Board added the wording compliance with requirements of the AAB must be

maintained. Michael acknowledges that the ZBA may have to grant zero parking for a particular project but they do not want to.

- Abby Swaine spoke about the issues of clear sidewalk and how cluttered sidewalk is, so it is not always easy for people with disabilities who can use the T to access it.
- Jim M. spoke about how he agreed with all that has been said and he feels the Warrant Article should be rewritten and there should be explicit reference to the needs of people with disabilities.
- Jim L. spoke about how the Variance process is still available to a developer who cannot build a driveway or parking. Michael said that the Variance process has a high legal threshold and in practice even if the ZBA gives a variance, neighbors can sue.
- Henry spoke about how he feels we would need explicit language about maintaining accessible parking even though he supports an overall reduction in parking minimums.

Michael spoke about how his original proposal had a 5% minimum for accessible (HP) parking. He thinks that a way forward is voting conditional on that being added back in.

- Miriam suggested having Michael come back after the amendment is made.
- Michael suggested a vote
 - **Vote:** Miriam made a motion that the **Commission cannot support this Warrant Article in its current format, but would be happy to support with the amendment stipulating at least of 5% accessible HP parking per dwelling unit.** Henry seconded. Ann abstained. All other members present voted in favor of the motion as stated above. Motion carries 6-0-1.

- **Public Hearing on Warrant Article 6:** The ADA Coordinator presented on Warrant Article 6. The Warrant Article as written modifies the current By-Law on Sidewalk Obstructions. A visual presentation was provided. Sidewalk Obstructions inhibit free and clear passage on the public sidewalks around Town. The ADA requires a minimum width of 36 inches of clearance and wherever possible the Town uses PROWAG which calls for a clear width of 48 inches and 80 inches of height clearance. The presentation highlighted the issue of overgrown foliage, which are found in all precincts in Town, cause tripping and access hazards for people with disabilities and others and force people into the street. The visual presentation showed a number of examples focusing on vegetation overgrowth, trash cans and cars. Sidewalks can be reclaimed.

The limitations of the current by-law include: 1) it does not specifically prohibit sidewalk obstructions by vegetation, it only prohibits sidewalk obstructions placed on the sidewalk. 2) Enforcement is supposed to be done by the police. 3) States obstructions should be

removed in one hour (which is often not possible for vegetation) 4) No penalty for non-compliance 5) Contains obsolete language (bale, coal)

Changes to the current by-law: 1) Explicitly prohibits vegetative obstructions. 2) Replaces police officer with “authorized agent of the Town”. 3) Establishes longer compliance period (21 days) for vegetative obstructions. 4) Establishes separate penalties for vegetative obstructions. 5) Like the Leaf Blower control authorizes DPW to handle enforcement. 6) Defines what constitutes an offence. 7) States that the Town will follow PROWAG standard wherever possible

Regarding violations: 1) First offence is a warning; confirmed by inspection on-site; written warning served at property; gives compliance period of 21 days. 2) If not handled, this leads to a second violation; fine is levied; written notice mailed to property owner of record. 3) Similar process for continued non compliance every 21 days.

Brookline has a commitment to accessibility; the proposed changes are in support of that commitment.

Public Comment:

- Henry supports it, thinks it will make Brookline a better place
- Jim talked about reporting on Brook-on-Line and to the ADA Coordinator; sidewalk obstructions are a real hazard.
- Abby talked about how some people say they don't see it in their neighborhood it could be because people have learned that an area is not accessible. Everything is also made worse by snow. People also asked about whether the Town will require them to remove their vehicles from their driveways because the rear ends of those vehicles obstruct the sidewalk and Select Board Member Fernandez said this is not a “nice to have” this is a necessity.
- Miriam encouraged Jim M to speak on his experience in Town Meeting to help TMMs understand.
- Joan asked how to educate people – maybe add it to the column?
- The ADA Coordinator said it is still unclear the Town could cut back the vegetation on someone's property and then charge them for it – DPW Commissioner was going to take that question to Town Counsel – Miriam says thinks if comes on to the public way it can be cut back, but it is unclear if we can charge the resident.
- Elaine asked about using this to put pressure on the Tree Warden re: overgrown Town trees. The ADA Coordinator did not think so. Miriam also believes Tree laws are different, they function is under a whole other set of guidelines. Miriam says he suggests going to the Tree Planting Committee.

Votes:

- Henry made a motion in **support of Warrant Article 6**. Jim M seconded. All members present voted in favor of the motion as stated above. Motion carries 7-0-0.
- Henry moved that the **members each send their opinions in favor of WA 6 to the ADA Coordinator who has permission to make them into a letter**. Joan seconded. A roll call vote was taken. All members present voted in favor. Motion carries.
 - **Action:** Said letter will be sent to the Combined Reports and Town Moderator for Fall 2021 Town Meeting and posted to the BCOD website.

Old Business

Review October 2021 Tab column: Elaine shared her screen. The draft article was reviewed. The ADA Coordinator suggested removing the first paragraph with percentages re: how many people with disabilities work. Removed the article was under 500 words.

The ADA Coordinator asked if the Access Brookline could be published earlier in November. Focusing the column on Warrant Articles 6, 11, & 12. Publishing both letters – combined under 500 words.

Vote:

- Jim M made a motion to **publish the columns in both October and November**. Henry seconded. A roll call vote was taken. All members present voted in favor. Motion carries. 7-0-0.

FY 2022 MOD Grant: The ADA Coordinator announced that the Municipal Americans with Disabilities Act Grant was submitted to the Massachusetts Office on Disability (MOD) on October 8 before 5 PM. MOD Grants selected for funding will be announced by December 2021.

Report from Transportation Board Liaison: The Transportation Board met in September – no announcements from that meeting. The TB is changing their regular meeting to the third Wednesday of every month. Chris Dempsey resigned from the Transportation Board, because he is running for office. The TB has three new members: Wendy Friedman, Shonali Gaudino, and Brian Kane who was also elected the new Chair of the Transportation Board. He has been on TB in the past. Nancy will continue to be the Transportation Board Liaison for the Commission on Disability.

Action: Nancy will forward the staff memos to the ADA Coordinator who will share them with the members.

New Business

Election of new Commission Leadership in January 2022: Jim M. has requested that we move the election of leadership to January 2022. No one objected to that. The ADA Coordinator explained how nominations and voting is handled. Jim M. mentioned that the Commission needs a new member. Jim plans to run for Chair but would like a Co-Chair or Deputy Chair.

The ADA Coordinator proposed a subcommittee to review Warrant Articles and make recommendations to the larger Commission for Public Hearings. This will be discussed at a future meeting.

Action: Miriam will announce that BCOD is looking for a new member at the next Select Board Meeting.

Announcements: Select Board Meeting on September 28, 2021, Warrant Article 6 will be presented.

Next Meeting: November 10, 2022 @ 5:30 PM via Zoom

Meeting adjourned at 7:25 PM