

ARTICLE 27

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

The Select Board reconsidered their vote on Article 27 in order to address a referral motion proposed by Linda Pehlke and Jonathan Margolis, and the alternate referral motion proposed by Chris Dempsey. While the Board appreciated the intent of the Pehlke motion calling for a comprehensive approach to the zoning issues raised under articles 27 and 34 they felt that the Dempsey motion allowed for an expedient way to address the deficiencies that were uncovered late in the review process. The Dempsey referral also allowed the Planning Department to continue their workplan to address zoning changes with a number of standing committees. The Planning Department has indicated that it can propose a zoning amendment that allows for micro units in designated zones in time for Spring Town Meeting, and therefore the Board chose to support the Dempsey motion.

A unanimous Select Board voted FAVORABLE ACTION on the Dempsey referral motion.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

RECOMMENDATION ON LINDA PEHLKE MOTION FOR REFERRAL
OF WARRANT ARTICLES 27 AND 34.

On November 30, TMM Linda Pehlke offered a Motion for Referral of Warrant Articles 27 and 34. Article 27 calls for a zoning by-law amendment that would permit so-called Micro Units – apartments with floor areas of 500 square feet or less – to be constructed as-of-right in SC, T, F, M, L and G Zoning Districts. Article 34 is a Resolution “[t]o encourage and incentivize additional housing units, including where and at what levels, would be beneficial to the Town” and other related provisions.

The Advisory Committee has previously offered recommendations and alternative language regarding both of these articles. Several others, including the Select Board, have also offered amendments to the Petitioners’ articles as submitted.

Although Article 34 is a resolution rather than an explicit zoning by-law amendment, the subject matter of Article 34, if adopted, would ultimately involve potentially extensive changes to the Brookline Zoning By-Law that would be required in order to accommodate the extensive new construction that the petitioners of the article seek to achieve.

The Planning and Regulation Subcommittee and the Advisory Committee overall have long expressed concerns over the persistence of piecemeal changes to our Zoning By-

Law that are offered from time to time to address specific objectives that are brought forward by various interests. In many instances, once adopted, these individual revisions have unintended consequences that are then resolved – or are attempted to be resolved – through still more piecemeal revisions.

Warrant Article 27 is a case in point: Several years ago, a so-called Emerald Island Overlay District was proposed for the strip of industrial use land between the Town Line at the Riverway and Brookline Avenue. Among other things, the Zoning Overlay created a new Use Code (6D) which provides for “Dwelling, Micro Unit *Permitted by Special Permit in the I-(EISD) District in accordance with 5.06.4.j.” Prior to this change, there was no such thing as a “Micro Unit” in the Town’s zoning by-law and, as such, small apartments were not differentiated from other larger units.

The new Use Code 6D was inserted into the Table of Use Regulations, Section 4.07, providing for Micro Units only in the Overlay District. However, as drafted, the Table indicates that such use is not allowed in any Zoning District other than the Emerald Island Overlay District. Preexisting small apartments that had never been explicitly addressed in the Table of Use Regulations at all then apparently acquired the designation of “Micro Units” and thus became disallowed. Proponents of Article 27 have argued that such small units had been allowed townwide prior to the creation of the Emerald Island Overlay District when they were inadvertently made illegal, and that Article 27 is needed to correct this unintended consequence.

Town Meeting should resist these one-off and piecemeal revisions to Brookline’s Zoning By-Law. And this is the central focus of the Pehlke referral motion. As proposed, “the subject matter of Article 27 (Micro-Unit Dwellings), and the other special housing uses created within the Emerald Island Special District Zoning (Age restricted and Live/Work), as well as residential parking requirements, and housing generally, which are unavoidably interrelated to the subject matter of Article 27, shall be referred to a SELECT BOARD appointed PLANNING AND ZONING OVERSIGHT COMMITTEE.”

Pehlke explains that “[d]uring the vetting process of Article 27, it became apparent that the Town would benefit from a more comprehensive analysis of the potential impacts, potential benefits and unintended consequences of adopting the proposal as written. It also became apparent that in combination with the other zoning amendment proposals currently being contemplated, such as removal of residential parking requirements, possible zoning incentives for fossil fuel free construction, and significant housing production (as contemplated by Article 34), the Town needed to be able to assess these proposals comprehensively, to understand their consequences and long-term impacts on Brookline’s built environment.” The Pehlke motion envisions the creation of a “Select Board-appointed Planning and Zoning Oversight Committee [that] would be charged with determining the appropriate elements and framework to comprehensively identify primary goals and priorities for Brookline’s built environment and landscapes. It is anticipated that this would involve significant public participation. ... The goal of this committee will be

to comprehensively analyze and balance the community’s many competing goals and priorities that relate to the built environment.”

The Advisory Committee recognized that while zoning-related planning efforts, including those of the Housing Advisory Board as well as those of several other Town bodies, are underway, each of these is primarily focused upon the specific objectives of each of these bodies. Such silo-driven planning is not capable of addressing and resolving the interrelationships of their respective goals and proposals. A single high-level body that is charged with considering and balancing all of these potentially conflicting interests and goals is necessary to foster a coordinated and comprehensive approach to zoning, something that many agree is sorely needed.

The Advisory Committee overwhelmingly agreed with both the objectives and specific proposals contained in the Pehlke referral motion. The Committee met on November 30, 2020 to consider the Pehlke motion and, by a vote of 26-1-0 recommends FAVORABLE ACTION on the Pehlke motion to refer Articles 27 and 34 to the PLANNING AND ZONING OVERSIGHT COMMITTEE to be appointed by the Select Board.

However, the recommendation for referral of Article 34 to the PLANNING AND ZONING OVERSIGHT COMMITTEE is contingent on the passage of the Pehlke motion under Article 27. If the Article 27 motion does not pass, the Advisory Committee recommendation under Article 34 is unchanged and appears in Article 34 Supplement No. 5.

ARTICLE 28

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

The Select Board reconsidered their vote on Article 28 in order to address the Vitolo amendment. After discussing the amendment, members of the Board worked on further edits distributed as Supplement 3. A unanimous Select Board voted FAVORABLE ACTION on the following motion: (this is the same language as Supplement 3)

MOVED: That the Town he Town will amend its Section 2.1.14 and its Article 2.2 and its Article 3.20 of its General By-Laws to establish a fiscal education requirement for all Town Meeting Members, Advisory Committee Members and other elected officials and individuals appointed to any Board or Commission that has or could reasonably be expected to have input into any matter affecting the financial situation of the Town.

SECTION 2.1.14 EDUCATIONAL TRAINING FOR TOWN MEETING MEMBERS

All Town Meeting Members shall, within one hundred and twenty (120) days after the effective date of this by-law for Town Meeting Members incumbent on that date, and within one hundred and twenty (120) days after their initial election for Town Meeting Members elected subsequent to that date, complete the on-line Conflict of Interest Law training provided by the State Ethics Commission. In the alternative, Town Meeting Members may attend an educational training seminar hosted by the Office of Town Counsel. This Article shall not apply to Town Meeting Members who have fulfilled the training requirements set forth in Article 3.20. Town Meeting Members shall not be required to receive such training more than once, unless they are otherwise required to do so as special municipal employees under the provisions of G.L. c. 268A. This by-law provision became effective on May 1, 2016.

Further, twice annually, all Town Meeting Members shall be offered a fiscal educational training seminar addressing financial information about both the Town and the Public Schools of Brookline, organized by the Chair of the Advisory Committee and supported by Town Staff, members of the Advisory Committee, and other knowledgeable parties.

Within one week of the conclusion of any training session identified in this section, the training session organizer shall transmit in writing the names of all attendees to the Office of the Town Clerk. The Office of the Town Clerk shall then update within four weeks the Public Record of attendance by Town Meeting members, which should be publicly accessible on the Town website.

Article 2.2.2 TERMS OF APPOINTMENT

Members shall hold office from July 1st, in the year of their appointment, for three-year staggered terms and until their successors are appointed. All vacancies shall be filled by the Moderator for the unexpired remainder of the term of the appointee's predecessor. A member of the Committee shall cease to be a member upon the occurrence of any of the following events:

1. Removal of residence from the Town of Brookline.
2. Absence from seven or more duly called and held meetings of the Committee during any year of the member's term, considering each period from July 1 to the following June 30 as a year for this purpose.

A member of the Committee who is a Town Meeting Member shall cease to be a member of the Committee effective the 30th day of June following the occurrence of any of the following events:

1. Removal of residence from the precinct from which [they were] elected a Town Meeting Member.
2. Failure of re-election as a Town Meeting Member.
3. Expiration of term as a Town Meeting Member.

Upon ascertaining that any of events 1-5 has occurred, the Chairman of the Committee shall notify the Secretary of the Committee who shall give written notice to the member in question. A copy of such notice shall be sent promptly to the moderator.

Further, all Advisory Committee Members shall, within one hundred and twenty (120) days after the effective date of this by-law for Advisory Committee Members incumbent on said effective date, and within one hundred and twenty (120) days after their initial appointment he Advisory Committee subsequent to said effective date, attend a fiscal educational training seminar. Such seminars will address financial information about both the Town and the Public Schools of Brookline, and will be organized at least annually by the Chair of the Advisory Committee and supported by Town Staff, members of the Advisory Committee, and other knowledgeable parties. This Article shall not apply to Advisory Committee members who have fulfilled the training requirements set forth in Article 3.20. Advisory Committee Members shall be required to receive such training at least every three years.

ARTICLE 3.20.2 MANDATORY EDUCATIONAL TRAINING

All Elected and Appointed Officials shall within one hundred and twenty (120) days before or after their election or appointment to a Committee or Subcommittee, attend an educational training seminar hosted by the Office of Town Counsel which shall include the requirements of the Open Meeting Law and Conflict of Interest Law In the alternative, members may meet with Town Counsel, or a member of his/her staff, to receive such information and training.

Further, all Elected and Appointed Officials appointed to any Board or Commission that has or could reasonably be expected to have input into any matter affecting the financial situation of the Town shall, within one hundred and twenty (120) days after the effective date of this by-law if incumbent on said effective date, and within one hundred and twenty (120) days after their initial election or appointment subsequent to said effective date, attend a fiscal educational training seminar. Such seminars will address financial information about both the Town and the Public Schools of Brookline, and will be organized at least annually by the Chair of the Advisory Committee and supported by Town Staff, members of the Advisory Committee, and other knowledgeable parties. Elected and Appointed Officials appointed to any Board or Commission that has or could reasonably be expected to have input into any matter affecting the financial situation of the Town shall be required to receive such training at least every three years.

If any portion or provision of these By-Law changes are declared invalid or unenforceable by a court of competent jurisdiction or by the Office of the Attorney General, the remaining provisions shall continue in full force and effect.