

REVISED EXPLANATION FOR WARRANT ARTICLE 11
Petitioners: Nancy Heller, Dennis De Witt, and Sean Lynn-Jones
October 11, 2022

The Article 11 motion recommended by the Advisory Committee and moved by the petitioners

MOVED: That the Town amend the General By-Laws as follows:

By amending Section 5.3.9 of the Demolition Delay By-Law (language to be inserted appears in **bold underlined**, language to be removed from the as-filed version appears in ~~strikethrough~~) Changes between the as filed and amended version are in red.

SECTION 5.3.9 EXTENDED WITHHOLDING OF DEMOLITION PERMIT

The Building Commissioner shall withhold the Demolition Permit for a period of one year, or for a period of eighteen months if the building meets the criteria of Section 5.3.5(b), from the date upon which the final determination was made that a building is a Significant Building except as provided in Section 5.3.11, **provided however that other provisions of this section 5.3.9 notwithstanding, during the first 12 months subsequent to the ~~date of approval by the Attorney General~~ effective date of this section 5.3.9 as amended in 2022 (the “24 Month Approval Date”), the Building Commissioner shall withhold the Demolition Permit for a period that shall not expire sooner than that date which is 24 months subsequent to said 24 Month Approval Date or ~~that such~~ date that is otherwise provided ~~above, within this section 5.3.9, whichever shall be the later.~~**

Clean copy of the motion:

SECTION 5.3.9 EXTENDED WITHHOLDING OF DEMOLITION PERMIT

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Summary

Article 11 would temporarily amend the Demolition Delay Bylaw (Article 5.3 of the General By-Laws) to increase the length of a demolition delay to up to 24 months for buildings found by the Preservation Commission to be historically or architecturally significant. Under the current bylaw, a demolition delay lasts for 12 months for most buildings found to be significant and 18

months for buildings that are on or are eligible for the National or State Registers of historic places. While a demolition delay is in effect, the building commissioner may not grant a demolition permit. During the delay, the developer and the Preservation Commission have an opportunity to negotiate conditions—including preservation of the structure—under which the demolition stay could be lifted.

Article 11 would extend the 12 and 18 month demolition delays to a maximum of 24 months. The maximum demolition delay would be 24 months immediately after the effective date of the by-law amendment. Subsequently over the next 12 months after the effective date, the maximum demolition delay gradually would be reduced in length from 24 months, until the delay is the same as it is in the current bylaw. For example, on the effective date of the Article 11 bylaw amendment, a structure found to be significant would have a demolition delay of 24 months. Two months after the effective date, an applicant who applied to demolish a significant building would have a 22 month demolition delay, etc. until the delay under the current by-law is equal to or longer than that under the temporary 24 month delay provided for by Article 11. See below for additional examples.

Why should we try to prevent demolitions?

Brookline is experiencing an epidemic of demolitions in which moderately priced one- and two-family houses are being torn down. The ongoing demolitions threaten the character of our neighborhoods by typically replacing moderately priced buildings with multi-million dollar luxury condominiums. Each condominium is often comparable in price to the entire demolished building. It is a form of MacMansionization by condo-box that, at the same time, degrades neighborhoods, streetscapes, and the sense of community.

These are some of the reasons for trying to prevent demolition of existing structures:

- Demolitions often eliminate moderately priced housing and replace it with much more expensive luxury residences.
- Demolishing existing buildings and erecting new ones harms the climate and the environment. Demolition and construction are highly carbon-intensive activities that generate greenhouse gases. One of the biggest problems is embodied carbon—the carbon expended in the extraction, production, and transportation of materials and the fabrication and demolition of structures. The National Trust for Historic Preservation estimates that it takes 10 to 80 years for a new green building to recover the environmental cost of demolishing an existing one. The greenest building can and should be the one that already exists. Sustainability means preserving and reusing existing buildings.
- Regardless of any architectural or historic importance, demolitions typically destroy buildings of neighborhood significance that contribute to the overall look, feel, and comfort of a coherent streetscape.
- Within the current regulatory (zoning) context, randomly inserted, often “by right” replacements detract from a welcoming public realm — not least because they are raised

above blank, street facing, garage doors — showing complete indifference, if not seeming hostility, to neighborhood character.

- As a matter of the developer’s convenience, demolitions often include removing all the trees on a property.
- Because the current demolition delay bylaw provides for demolition stays of 12 months (in most cases) or 18 months (if the property is in a National Register District), it often fails to protect buildings from developers intent on maximizing profits, who would in any case spend much of that time in the permitting process. Developers wait out the delay, the building is demolished, and the replacement is often designed in a regulatory framework not structured to meaningfully respond to community needs and values.
- The new buildings constructed after demolition (most often with the same number of units) are built to the maximum FAR, with garages, elevators, etc., and tend to maximize footprints, increase paved area, maximize skyplane obstruction, destroy trees, and eliminate open space and greenspace that is part of the community’s sense of shared streetscape.
- Too often demolition replaces buildings whose components, such as porches, bays, and dormers, create a friendly, welcoming streetscape, with flat-walled, code- driven boxes presenting street level garage doors and skyplanes (rooflines) lacking any articulation.

How significant is the problem of demolition of existing buildings in Brookline?

As the table in Appendix A shows, the number of demolition applications in Brookline has been slowly but steadily increasing over time. There are annual fluctuations that may reflect changes in the economy and housing markets, but the upward trend is clear.

- About 70% of demolition applications are for full demolition.
- About 46% of full demolition applications are determined to be significant.
- In the 7 years from 2005–2011, the average number of full demolition applications per year was 27.
- In the 10 years from 2012–2021, the average number of full demolition applications per year was 39.
- Compared to 2005–2011, during 2012–2021 there has been a 44% increase in full demolition applications per year
- Compared to 2005–2011, during 2012–2021 there has been a 113% increase in applications to demolish properties deemed “significant” per year.

Cumulative Impact

Although the number of demolition applications and demolitions in any given year may seem relatively small, even if that number is increasing over time, the cumulative impact of the annual

demolitions is significant. Over the course of 20–30 years, hundreds of buildings are demolished. Demolition is permanent, so it has an enduring impact on Brookline’s neighborhoods.

Loss of Moderately Priced Housing

As Appendix B shows, the recent pattern has been for demolitions to eliminate moderately priced one- and two-family houses, particularly but not only in North Brookline. Approximately two-thirds of the residential buildings currently subject to a demolition stay or for which a demolition stay has recently expired are in this category.

Public Support for Preservation of Existing Buildings

Many Brookline residents have expressed concern about the demolition of existing buildings. Town Meeting members say that residents often ask them what can be done to stop a building from being torn down. Director of Planning and Community Development Kara Brewton has reported that there is a lot of public frustration about demolitions.

When a survey conducted in the course of preparing the 2022 Housing Production Plan (HPP) asked what Brookline’s priority housing initiatives should be, “Encourage Preservation of Existing Homes” was listed more than any other response.

This public concern about demolitions is increasing. A similar survey had been conducted in 2016 in the process of preparing the HPP. According to the report of the 2022 HPP survey, “The most notable change is the increased support for ‘encourage the preservation of existing homes’ between 2016 and 2022.”

What would Article 11 do and how would it affect demolitions?

Article 11 would amend the Demolition Delay Bylaw (Article 5.3 of the General By-Laws) to increase the length of a demolition delay to 24 months for buildings found by the Preservation Commission to be historically or architecturally significant. Under the current bylaw, a demolition delay lasts for 12 months for most buildings found to be significant and 18 months for buildings that are on or are eligible for the National or State Registers of historic places.

The primary effect of Article 11 would be to delay demolitions while the temporary extension of the demolition delay periods remained in effect. The purpose of the article is to temporarily extend, during a 24 month period, the 12 or 18 month demolition delays imposed by the Preservation Commission so that the Town has some “breathing room” in which to consider ways of reducing the number of residential building demolitions.

Article 11 could, however, limit the number of demolitions or produce better development outcomes while it was in effect. There are several ways in which this might occur.

First, a developer who was eager to demolish a building and erect a new structure might be more motivated to negotiate some form of mitigation or preservation with the Preservation Commission in return for having the demolition stay lifted before it expired/ Such a developer

might choose to “wait out” a 12-month demolition stay, but, when faced with the prospect of a 24-month delay, might be willing to explore development options that would preserve some or all of the existing structure. Such options might include moving the structure or preserving the most important façade(s).

Second, the longer demolition stays would give neighborhood residents more time to work with the Preservation Commission to develop a local historic district (LHD) proposal. The LHD process can be time-consuming. Although six of the nine existing Brookline LHDs were established while a demolition stay was in effect for at least one building in the proposed LHD, a 12-month stay does not always allow enough time for residents to consider the LHD option and for Town Meeting to vote on the proposed LHD. Establishing an LHD that included the structure subject to a demolition delay would protect that structure from being demolished.

Third, even if neighborhood residents decided not to try to establish an LHD, the possibility that they might be able to do so during the longer demolition delay might give the Preservation Commission more leverage in any negotiations with a developer.

Finally, a longer demolition stay would provide more time for the developer and the Preservation Commission to explore all possible options for preserving a structure that is threatened with demolition. Having more time might make it possible to reach an agreement on the conditions for lifting the stay.

Demolition stays do not always prevent demolition of a building. The Coolidge Corner Theatre is a notable exception. Its preservation was assured while a demolition delay was in effect.

Although it is intended as a temporary extension of Brookline’s demolition delays, Article 11 also could serve as a “pilot program” for gathering information on whether the longer demolition delay period helped to limit the number of demolitions or improve any arrangements agreed upon by the Preservation Commission and developers.

How would Article 11 change the existing demolition delay periods?

Because Article 11 is an amendment to the General Bylaw, it would go into effect when it is approved by the Attorney General’s office. After recent Town Meetings, the approval process has usually taken several months.

Assume that the effective date of the bylaw amendment in Article 11 will March 1, 2023. Then, because all demolition delays are at least 12 months and Article 11 would extend those to 24 months, no building whose demolition delay began between March 1, 2023 and February 29, 2024 would be demolished before February 28, 2025, unless the Preservation Commission lifted its stay. (Article 11 cannot be made retroactive, so it would not affect demolition delays already in process.)

Article 11 would extend the duration of 18 month demolition delays that were imposed with a starting date between March 1, 2023 and July 31, 2023. Any 18 month delay beginning after July 31, 2023 would not be affected, as its normal delay would extend past February 28, 2025.

Article 11 would extend the duration of any 12 month delays that were imposed with a starting date between March 1, 2023 and February 29, 2024. Any 12 month delay beginning after February 29, 2024 would not be affected, as its normal delay would extend past February 28, 2025.

Here are some examples of how long a demolition stay would be if Article 11 is approved. These examples all assume that Article 11 would go into effect on March 1, 2023, and remain in effect for two years, i.e., until February, 28, 2025.

- The Preservation Commission imposes a 12 month delay that begins on July 1, 2023 and that would end on June 30, 2024. Under Article 11, that stay would be extended to 20 months and would end on February 28, 2025.
- The Preservation Commission imposes an 18 month delay that begins on July 1, 2023 and that would end on December 31, 2024. Under Article 11, that stay would be extended to 20 months and would end on February 28, 2025.
- The Preservation Commission imposes a 12 month delay that begins on October 1, 2023 and that would end on September 30, 2024. Under Article 11, that stay would be extended to 17 months and would end on February 28, 2025.
- The Preservation Commission imposes an 18 month delay that begins on October 1, 2023 and that would end on March 31, 2025. Under Article 11, that stay would remain 18 months and would still end on March 31, 2025.
- The Preservation Commission imposes a 12 month delay that begins on May 1, 2024 and that would end on April 30, 2025. Under Article 11, that stay would remain 18 months and would still end on April 30, 2025.

What is the relationship between Article 11 and Article 12?

Article 11 and Article 12 are intended to work together to slow the pace of demolitions to allow time for bylaw amendments that would encourage preservation of existing buildings and reduce the incentives to tear them down. Article 11 amends the existing demolition delay bylaw, which is part of the General Bylaws. It would enable the Preservation Commission to grant demolition stays that are six months longer than the current 12 and 18-month stays. Article 11 only applies to buildings that are determined to be architecturally or historically significant. In recent years, the Town's Preservation Commission staff has determined that about 50% of buildings that the owner wants to demolish are significant.

Because it does not apply to all demolitions, Article 11 is an imperfect tool for slowing the pace of demolitions. It is, however, a useful tool that takes into account what is legally possible based on advice from Town Counsel's office and the experience of other communities in Massachusetts. At least one other Massachusetts community (Milton) has a demolition delay bylaw that provides for demolition stays of 24 months.

The petitioners of Article 12 initially intended to propose a Zoning Bylaw amendment that would impose a temporary moratorium on demolition of residential buildings. While the moratorium was in effect, the Department of Planning and Community Development would study options for preserving existing building and reducing the incentives for demolition.

After consulting with the office of Town Counsel, however, the petitioners have concluded that there is a risk that such a bylaw amendment would be rejected by the office of the Massachusetts Attorney General. The moratorium also might be vulnerable to legal challenges.

The petitioner's revised motion under Article 12 is a resolution that calls on the Department of Planning and Community Development to develop recommendations for limiting the number of demolitions in Brookline so that the November 2023 Town Meeting could amend the bylaws to increase incentives for preservation and reduce incentives for demolition.

Article 11 and Article 12 complement one another. Article 11's purpose is to "pause" demolitions. Article 12's purpose is to ask Brookline's Department of Planning and Community Development to offer a plan for limiting future demolitions.

What long-term measures could be implemented to prevent demolitions?

While Article 11's temporary extended demolition delay of up to 24 months is in effect, the Department of Planning and Community Development and/or the Preservation Commission should consider revisions to the General By-Laws and Zoning By-Law that could be adopted by Town Meeting before the extended demolition delay expires. Such revisions could include:

- Reducing the allowable floor area ratio (FAR) in certain zoning districts where the allowable FAR significantly exceeds the FAR of current structures.
- Developing neighborhood-sympathetic form-based zoning.
- Allowing a greater number of housing units—including affordable units—than the underlying zoning allows, if the principal structure is preserved, perhaps through a preservation restriction.
- Allowing the creation of Neighborhood Conservation Districts and a related design review board under M.G.L. Chapter 40A (Zoning) to replace the Town's disallowed Home Rule based Neighborhood Conservation District bylaw.
- Extending the current 12 month and 18 month demolition delays respectively to 18 and 24 months.
- Requiring demolition applicants to make a documented good faith effort to sell the property to someone who will use or repurpose it without demolition, as required in some locations in the state.

- Extending the special permit for demolition required in Section 5.09 2a of the Zoning By-Law to certain other parts of Brookline. (According to that section, all properties on or within 100 feet of Washington, Harvard, Beacon, and Boylston Streets, and Brookline Avenue or any structure or outdoor use on a lot any part of which is located in the G-1.75 (CC) or L-0.5 (CL) Districts requires a special permit and design review for demolition and subsequent construction.)
- Extending the design review/special permit requirement that applies to any substantially complete demolition of a principal structure in the Coolidge Comer Design Overlay District to certain other parts of Brookline. (Warrant Article 13 of the November 2022 Town Meeting addresses this issue.)

Recent state legislation (Section 3A of M.G.L. Chapter 40A) calls for MBTA communities to adopt zoning for “as of right” multifamily development in areas near transit. Between now and December 31, 2023, the Department of Planning and Community Development will develop the Town’s response to Section 3A of M.G.L. Chapter 40A with the goal of submitting recommendations to the November 2023 Town Meeting. Any new policies and bylaws to reduce the number of demolitions in Brookline need to be carefully integrated with one another and Town’s response to Section 3A of M.G.L. Chapter 40A. It will be particularly important to respond to Section 3A in a way that does not produce increased incentives for the demolition of Brookline’s existing buildings.

DATA RELEVANT TO WARRANT ARTICLES 11 AND 12

Appendix A:
Brookline Demolition Applications by Category, 2005–2021

Year	Total Cases	Full Demolition	Initially Significant	Non-sig	Sig Full
2005	34	32	9	25	9
2006	29	25	3	26	3
2007	25	22	7	18	7
2008	38	27	12	26	11
2009	31	25	7	24	7
2010	30	25	12	18	11
2011	45	30	24	21	18
2012	42	37	18	24	15
2013	37	28	17	20	15
2014	41	36	31	10	26
2015	53	41	30	23	20
2016	63	51	24	39	19
2017	59	33	35	24	22
2018	65	36	41	24	19
2019	71	33	48	23	22
2020	68	40	32	36	20

2021	84	57	50	34	23
Total	815	578	400	415	267

Source: Preservation Commission Records

Appendix B:

Properties Subject to a Demolition Stay or for which a Stay Expired in 2022

These twenty-one properties are residences for which a demolition stay is in effect or for which a demolition stay has expired in the past six months. Note that 40 Kent Street has been converted from residential use to the Elks lodge, 92 Sewall Avenue has been converted for use as an inn, and 178 Mason Terrace has been used as a childcare center.

These properties provide an indication of the type of property currently slated for demolition that also would be subject to the provisions of Article 11. A longer list of recent and pending demolitions would include properties not deemed to be significant by the Preservation staff.

Seven of the twenty properties are two-family houses with an average assessed value of \$1,626,557, ranging from \$842,200 to \$2,219,300.

One is a two-unit condominium with units assessed at \$1,232,900 and \$1,568,300.

Five of the properties are moderately-priced (by Brookline standards) single-family houses with an average assessed value of \$1,941,860, ranging from \$1,562,900 to \$2,198,100. One of those houses has three units. One has two units.

Five of the properties are higher-priced single-family houses an average assessed value of \$2,754,560 ranging from \$2,528,600 to \$2,907,900.

Three are properties not currently used as residences.

If the three nonresidential properties are excluded, approximately 67% (12/18) of the residences slated for demolition are moderately-priced one- and two-family residences.

Note that the average FY2022 assessed value of a single-family residence in Brookline is \$2,262,816 and two- and three-family residences have an average value of \$2,030,278.

Source: Brookline Board of Assessors, Presentation at Tax Classification Hearing, November 30, 2021.

https://www.brooklinema.gov/DocumentCenter/View/28076/FY2022_Classification_Hearing_Presentation?bdlid=

202 Mason Terrace. Stay expires 9/13/23. Single-family but has two units.
Assessment: \$1,899,400
Preservation Report: [Mason-Ter 202 Demo-Report \(brooklinema.gov\)](#)

15-17 Glenland Road. Stay expires 9/13/23. Two-family. Assessment: \$842,400
Preservation Report: [Glenland-Rd 15 Demo-Report \(brooklinema.gov\)](#)

269 Lee Street. Stay expires 5/23/23. Single family. Assessment: \$2,749,400
Preservation Report: [Lee-St 269 Lift-Report \(brooklinema.gov\)](#)

38 Stedman Street. Stay expires 5/10/23. Single-family. Assessment: \$2,049,500
Preservation Report: [Stedman-St 38 Demo-Report \(brooklinema.gov\)](#)

61 Heath Street. Stay expires 10/26/23. Single-family. Assessment: \$2,833,900
Preservation Report: [61-Heath-Street-Demo-Report \(brooklinema.gov\)](#)

123 Fuller Street. Stay expires 4/12/23. Single-family. Assessment: \$1,562,900
Preservation Report: [Fuller-St 123 DemoReport \(brooklinema.gov\)](#)

123 Lee Street. Stay expires 1/11/23. Single-family. Assessment: \$2,528,600
Preservation Report: [Lee-St 125-Demo-Report \(brooklinema.gov\)](#)

153 St. Paul Street. Stay expires 1/11/23. Two-family. Assessment: \$1,682,000
Preservation Report: [St-Paul-St 153 Demo-Report January-2022 \(brooklinema.gov\)](#)

116 Columbia Street. Stay expires 12/14/22. Two-family. Assessment: \$1,839,900
Preservation Report: <https://www.brooklinema.gov/DocumentCenter/View/28625/Columbia-Street-116-Demo-Report-Final?bidId=>

71 Greenough Street. Stay expires 11/22/22. Single-family. Assessment: \$1,999,400
Preservation Report: [https://www.brooklinema.gov/DocumentCenter/View/28623/Greenough 71 Demo-Report November 2021?bidId=](https://www.brooklinema.gov/DocumentCenter/View/28623/Greenough-71-Demo-Report-November-2021?bidId=)

12 and 12A Griggs Terrace. Stay expires 5/9/23. Two-family. Assessment: \$2,219,300
Preservation Report: [Griggs-Rd 12 DemoReport November-2021 \(brooklinema.gov\)](#)

85 Naples Road. Stay expires 11/9/22. Two-family. Assessment: \$2,134,500
Preservation Report: [Naples-Rd 85 demoreport \(brooklinema.gov\)](#)

77 Thorndike Street. Stay expires 10/27/22. Two-family. Assessment: \$1,727,500
Preservation Report: [77-Thorndike-Street-Demo-Report \(brooklinema.gov\)](#)

135 St. Paul Street. Stay expires 10/12/22. Two-unit condominium.
Assessments: \$1,232,900 & \$1,568,300.

Preservation Report: [St-Paul-St 135 Demo-Report October-2021 \(brooklinema.gov\)](#)

92 Sewall Avenue. Stay expired 9/29/22. Single-family converted to lodging house/inn.
Assessment: \$3,198,400

Preservation Report: [Sewall-Ave 92 DemoReport September-2021 \(brooklinema.gov\)](#)

41 Codman Road. Stay expired 7/21/22. Single-family. Assessment: \$2,907,900

Preservation Report: [Sewall-Ave 92 DemoReport September-2021 \(brooklinema.gov\)](#)

40 Kent Street. Stay expired: 6/8/22. Single-family converted to Elks clubhouse.
Assessment: \$2,329,600

Preservation Report: [Kent-St 40 Demo-Report June-2021 \(brooklinema.gov\)](#)

24 Auburn Street. Stay expired 6/8/22. Single-family; 3 units. Assessment: \$2,198,100

Preservation Report: [AuburnSt 24 Demoreport \(brooklinema.gov\)](#)

314 Clark Road. Stay expired 5/11/22. Single-family. Assessment: \$2,753,000

Preservation Report: [Clark-Rd 314 demoreport \(brooklinema.gov\)](#)

98 Chestnut Street. Stay expired 4/13/22. Two-family. Assessment: \$940,300

Preservation Report: [ChestnutSt 98-Report April-2021 \(brooklinema.gov\)](#)

178 Mason Terrace. Stay expired 4/13/22. Childcare center. Assessment: \$1,792,000

Preservation Report: [Mason-Ter 178 Demo-Report April-2021 \(brooklinema.gov\)](#)

Sources:

<https://buildings.aboutbrookline.com/endangered>

<https://www.brooklinema.gov/2068/25995/Full-Demolition-Delays-List>