



**TOWN OF BROOKLINE
MASSACHUSETTS**

**REPORTS OF SELECTMEN
AND ADVISORY COMMITTEE**

on the

Articles in the Warrant

for the

SPECIAL TOWN MEETING

to be held in the High School Auditorium

Wednesday, June 2, 2004

at

7:00 P.M.

(Please retain this copy for use at the Town Meeting)

Town of Brookline

BOARD OF SELECTMEN

Robert L. Allen, Chairman

Joseph T. Geller

Gilbert R. Hoy, Jr.

Michael S. Sher

Michael W. Merrill

Richard J. Kelliher, Town Administrator

"The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operation of its programs, services or activities. Persons with disabilities who need auxiliary aids and services for effective communication in programs, services and activities of the Town of Brookline are invited to make their needs and preferences known to: C. Stephen Bressler, ADA Coordinator and Director of the Human Relations-Youth Resources Commission, 11 Pierce Street, Brookline, Ma. 02445, 730-2300 Voice, 730-2327 TDD, 730-2296 FAX."

MODERATOR

Edward N. Gadsby, Jr.

ADVISORY COMMITTEE

Harry K. Bohrs, Chair, 97 Toxteth Street.	566-3556
Neil Wishinsky, Vice-Chair 20 Henry Street.	739-0181
Carla Wyman Benka, 26 Circuit Road.	277-6102
Michael Berger, 112 Wolcott Road.	734-6139
Kenneth W. Chin, 200 St. Paul Street #3.	739-2519
David James Cotney, 79 University Road	739-6995
Nancy Daly, Chair, 161 Rawson Road.	232-0728
Nadine Gerdts, 56 Linden Place.	731-0420
L. Branch Harding IV, 145 Woodland Road.	738-0716
Gerard J. Hayes, 49 Gorham Road	277-0002
Sytske V. Humphrey, 46 Gardner Road.	277-1493
Mary F. Johnson, 286 Warren Street	566-7899
Jonathan A. Karon, 94 Naples Road	232-2558
Estelle Katz, 41 Park Street.	566-3457
Frederick Lebow, 71 Colchester Street.	739-1930
Roger R. Lipson, 622 Chestnut Hill Avenue.	232-0408
Pamela Lodish, 195 Fisher Avenue.	566-5533
Sean M. Lynn-Jones, 53 Monmouth Street	738-6228
Shaari S. Mittel, 309 Buckminster Road.	277-0043
Charles Moo, 1853 Beacon Street.	232-8796
William B. Powell, 16 Columbia Street.	731-0013
Stanley L. Spiegel, 39 Stetson Street.	739-0448
Ronny M. Sydney, 1443 Beacon Street.	232-8986
Leonard A. Weiss, 46 Hawthorn Road	277-8403
Karen Wenc, 84 Summit Avenue.	232-4983
Karen Roth, Budget Analyst, Town Hall	730-2115

JUNE 2, 2004

SPECIAL TOWN MEETING

INDEX

ARTICLE NO.

TITLE

1. Proposed Amendment to Zoning By-Law and Map Establishing a New General Business Medical Research (GMR-2.0) District and Special District Regulations and New Principal Use 36B. Research Laboratory for Scientific and Medical Research.

2004 SPECIAL TOWN MEETING WARRANT REPORT

The Board of Selectmen, Advisory Committee and Planning Board respectfully submit the following report on Articles in the Warrant to be acted upon at the 2004 Special Town Meeting to be held on Wednesday, June 2, 2004 at 7:00 p.m.

Note: The following pages of this report are numbered consecutively under each article.

ARTICLE 1

FIRST ARTICLE

To see if the Town will amend the Zoning By-law as follows:

- I. With respect to ARTICLE V DIMENSIONAL REQUIREMENTS, SEC. 5.06 – SPECIAL DISTRICT REGULATIONS, insert new subsections: 1. Purpose, 2. Establishment, 3. Procedures, and 4. Special Districts, with existing 1 through 3 converting to a., b. and c. under 4. Special Districts.**

SECTION 5.06 – SPECIAL DISTRICT REGULATIONS

1. Purpose

The following Special District Regulations recognize that unique land use, environmental, architectural and other physical conditions present within the Town may require detailed neighborhood, district or site planning and design review to insure: orderly and planned growth and development; historic and natural resource conservation; residential neighborhood preservation; economic viability of commercial areas; and concurrent planning for transportation, infrastructure and related public improvements. To insure that the dimensional and related requirements of the Zoning By-Law address these unique conditions, Town Meeting, from time to time, in accordance with MGL Chapter 40 A, may establish Special District Regulations and the Board of Appeals may consider applications for Special Permits based on those regulations.

2. Establishment

The establishment of Special District Regulations shall be based on one or more of the following:

- a. A study of land use, building, environmental, economic, architectural, design or other physical features of an area or district that defines the conditions and purposes supporting the establishment of Special District Regulations and the geographic area that will be subject to the regulations.
- b. The Comprehensive Plan, neighborhood or commercial area plan that defines an area where Special District Regulations should be applied.
- c. A conceptual or schematic design plan for one or more parcels of land or buildings within a district that will benefit from Special District Regulations.

3. Procedures

Applicants for Special Permits, subject to Special District Regulations, shall submit to the Board of Appeals the supporting studies and plans defined by Section 5.06.2. These plans or studies, which serve as the underlying basis for establishing Special

District Regulations, will also serve as the basis for the Special Permit findings of the Board of Appeals, along with the standards under Section 5.09.4. Community and Environmental Impact and Design Standards and Section 9.05.1. Conditions for Approval of Special Permit.

4. Special Districts [insert present sections 5.06 1-3 as subsections a, b and c]

II. With respect to a ZONING MAP CHANGE

1. Change the G-2.0 (VS) zoning district on the zoning map to GMR-2.0.

III. With respect to ARTICLE III, ESTABLISHMENT OF ZONING DISTRICTS, SECTION 3.01 – CLASSIFICATION OF DISTRICTS

1. Change 2. c. to read General Business (G) and General Business and Medical Research (GMR)

2. Replace 2.c.7 to read GMR -2.0 (Refer to Sec. 5.06, Special District Regulations)

IV. With respect to ARTICLE V. DIMENSIONAL REQUIREMENTS, SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS, add a new line in the Table after G-2.0 for the new district GMR- 2.0 as follows:

SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS							PBI ¹¹		MINIMUM YARD ³ (feet)			OPEN SPACE (% of gross floor area)	
DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	PBI ¹¹ NB ONLY	LOT WIDTH MINIMUM (feet)	HEIGHT ⁹ MAXIMUM	B	NB	Front ^{1,6}	Side ²	Rear	Landsc.	Useable ¹³
GMR- 2.0	Any Structure or principal use (dwelling-footnote 5)	none ⁴	2.0	2.5	none ⁴	45	60	100	none	none ⁷	$10 + \frac{L^8}{10}$	none	none ⁵
			4.0 ¹⁷	N/A		125 ¹⁷	N/A	N/A					

Insert the following new footnote 17 after the Floor Area Ratio Maximum and Height Maximum permitted within the GMR-2.0 District, as shown in the above revised Section 5.01, TABLE OF DIMENSIONAL REGULATIONS and in the footnote section below the table.

17. See SECTION 5.06 – SPECIAL DISTRICT REGULATIONS, 4. **General Business and Medical Research (GMR)**

V. With respect to ARTICLE V - DIMENSIONAL REQUIREMENTS, SECTION 5.06, SPECIAL DISTRICT REGULATIONS add a new paragraph d. under Special Districts, to read as follows:

d. General Business and Medical Research (GMR)

- 1) All applications for new structures, outdoor uses, and exterior alterations or additions in the GMR-2.0 District **which exceed a floor area ratio of 2.5 or a height of 100 feet shall be permitted only on a lot no less than 50,000 square feet and no greater than 65,000 square feet in area** and shall be subject to the requirements of § 5.09, Design Review, obtain a special permit per § 9.03, and meet the following requirements.
 - a) The maximum height shall not exceed 125 feet and the maximum gross floor area ratio shall not exceed 4.0.
 - b) no less than **25%** of the Lot Area shall be devoted to landscaped open space.
 - c) no less than 60% of the parking spaces required by the Board of Appeals shall be provided completely below grade.
 - d) no less than 25% of the provided parking spaces shall be offered to residents for overnight parking.
 - e) no less than 1% of the hard construction costs of constructing a building on a Lot (exclusive of tenant fit-up) shall be devoted to making off-site streetscape improvements (such as, but not limited to, lighting, street furniture and widening sidewalks) and undertaking transportation mitigation measures. A plan of the proposed off-site streetscape improvements and a description of the proposed transportation mitigation measures shall be submitted for the review and approval of the Planning Board or its designee.
- 2) The parking requirements for applications in the GMR-2.0 District in light of the proximity to rapid public transit shall be as follows:
 - a) **retail use:** one parking space per 350 g.s.f. of floor area
 - b) **office use:** one parking space per 600 g.s.f. of floor area
 - c) **research laboratory use (Use 36B):** one parking space per 1,000 g.s.f.
 - d) The number of parking spaces for the above uses in a GMR-2.0 District may be reduced by **special permit**, however, by no more than 15%, where it can be demonstrated to the Board of Appeals that it is warranted due to provisions in a Transportation Access Plan that includes recognized Transit Demand Management programs. A **Transportation Access Plan Agreement** shall be a condition of the special permit, shall be submitted for review to the Director of Transportation and the Director of Planning and Community Development, and shall require an annual report to the Director of Transportation. This **annual report** shall be accepted only after a determination by the Director of Transportation and the Director of Planning and Community Development that the Transportation Access

Plan is working satisfactorily, and if not, that the plan will be changed and implemented to their satisfaction.

- 3) A special permit granted under this section shall lapse within 2 years if a building permit is not issued and construction has not begun by such date except for good cause.

VI. With respect to ARTICLE IV, USE REGULATIONS, SECTION 4.07 – TABLE OF USE REGULATIONS:

Add a Principal Use 36B in SECTION 4.07 – TABLE OF USE REGULATIONS with the following:

Principal Uses	Residence				Business			Industry
	S	SC	T	M	L	G	O	I
<p>36B. Research laboratory for scientific or medical research, with a Biosafety Level of Level 1 or Level 2 as defined by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, and National Institutes of Health, provided the use is <u>located on a lot with no less than 50,000 square feet and no more than 65,000 square feet in area and is</u> operated in compliance with all town, state and federal health and safety regulations, and that thirty days prior to a Board of Appeals hearing on the use, and annually, a report detailing hazardous materials operations, processes, disposal and storage shall be reviewed and approved in writing by the Fire Chief and Director of Public Health and Human Services.</p> <p>* Permitted by Special Permit only in a GMR-2.0 District</p>	No	No	No	No	No	SP*	No	No

VII. With respect to ARTICLE V, DIMENSIONAL REQUIREMENTS, SECTION 5.21 – MAXIMUM FLOOR AREA REGULATIONS (PUBLIC BENEFIT INCENTIVES):

Insert “,GMR-2.0” in Table 5.02 after “G-2.0” in the heading of the third column.

VIII. With respect to ARTICLE V, DIMENSIONAL REQUIREMENTS, SECTION 5.32 – EXCEPTIONS TO MAXIMUM HEIGHT REGULATIONS (PUBLIC BENEFIT INCENTIVES):

Insert “,GMR-2.0” in paragraph 1 after “G-2.0”.

or act on anything relative thereto.

**PLANNING BOARD REPORT AND RECOMMENDATION
ON PROPOSED AMENDMENTS TO THE
G-2.0 (VS) VILLAGE SQUARE ZONING DISTRICT AND REQUIREMENTS**

In accordance with Chapter 40A of the General Laws of the Commonwealth of Massachusetts, after due notice had been given, the Planning Board held a public hearing on May 6, 2004 in Town Hall on zoning amendments related to the Village Square General Business District (includes B-2 or Brookline Place Parcel) and the Use Table related to an additional category for medical research laboratory use.

The advertisement for the public hearing appeared in the Brookline TAB on April 22 and 29, 2004. Copies of the notice were sent to all Town Meeting Members, neighborhood associations, Town agencies, Massachusetts Department of Housing and Community Development, Metropolitan Area Planning Council, Boston Redevelopment Authority (BRA), Newton Planning Department, and others. The minutes of the hearing and record of citizen attendance are on file in the Planning and Community Development Department.

At the close of the May 6th public hearing, the Planning Board voted unanimously to recommend FAVORABLE ACTION on the proposed revised amendments below, subject to:

- 1. a recommendation by the Director of Health and Human Services on whether or not to add language to Use 36B requiring that the proposed use and operation be evaluated by an independent, recognized expert, in addition to the Director of Health and Human Services and Fire Chief. (Similar language is currently required for Use 36A.);**
- 2. deletion of the second sentence under 3. Procedures, in Section 5.06 Special District Regulations in order to provide more flexibility during the special permit design review process and not require that the special permit findings be based solely on the conceptual designs presented during the zoning change process; and**
- 3. the addition of language to Article 18, subject to review and approval of Town Counsel, that the lease shall provide that the tenant, not the Town, be liable for any costs or Federal and State requirements for environmental clean-up/mitigation associated with contamination and any consequences resulting from such**

contamination, including to adjacent parcels, and shall indemnify and defend the Town against such liability.

The Planning Board also voted unanimously to recommend NO ACTION on the Citizen Petition zoning amendments.

BACKGROUND (See also **Planning Board Report for 3/04 Special Town Meeting**)

After the special Town Meeting, March 2004, where the zoning amendments related to Brookline Place were not approved, a group of citizens from the neighborhood submitted a petition to ask Town Meeting to reconsider the Two Brookline Place proposal with some minor language adjustments that they felt addressed some of the concerns heard at Town Meeting. This petition was subsequently revised by the Planning and Community Development Department Director and Town Counsel to better meet state requirements for zoning, and after a preliminary review by the Attorney General, was found acceptable by him.

EXPLANATION

The following is an explanation of the differences between the March 2004 Town Meeting Brookline Place zoning amendment and the current, revised version for June 2004 Town Meeting.

- **New paragraphs have been added under the Special District Regulations on purpose, establishment, and procedures.** These outline the reasons for creating special districts, requirements for studies and plans to support creation of special districts, and the procedures for a request for a special permit under the special district regulations.
- **The new special district being created will be called General Business and Medical Research (GMR – 2.0),** instead of Village Square General Business District, [G-2.0(VS)] to allow for medical research laboratories, as well as general and medical offices and retail uses.
- **The requirements for the special district** that must be met to get to the 125' and an FAR of 4 changed to **require 25% landscaped open space, as opposed to 20%.**
- **The Table of Dimensional Requirements for the GMR-2.0 district allows a height of 60' in a buffer zone, and a height of 100' and FAR of 2.5 in a non-buffer zone if public benefits are provided.** This is identical to the current zoning for the G-2.0(VS) district. However, this provision had been deleted in the March 2004 zoning amendment version. Appropriate references for the new zoning district GMR-2.0 have been added to Sections 5.21 Maximum Floor Area Regulations and 5.32 Maximum Height Regulations.
- **The new research laboratory use (36B), is now restricted to the GMR-2.0 district by special permit, and is not allowed in other General Business (G), Business and Professional Office (O), and Industrial Services (I) districts.**

PLANNING BOARD COMMENTS

After hearing public comment, Planning Board members discussed why they were strongly in favor of the revised amendments:

- The proposed massing and height of the building is appropriate for this area, and appropriate safeguards for possible laboratory use have been provided.
- An increase in open space over the prior amendment is required.
- Proposed development will undergo additional rigorous design review and public scrutiny. The process will include citizen and professional comment and provide a forum for weighing tradeoffs amongst various aspects of the project.
- Development will help revitalize the Brookline Village Commercial District.
- Development will bring more revenue to the Town and enhance the Town's ability to provide services to its citizens.
- The proximity of public transit and the proposed transportation demand management program will mitigate any potential transportation impacts.
- The proposed retail use at the street level, combined with the public open space and sidewalk improvements, will enhance the environmental quality and pedestrian friendliness of the area.
- Any clean-up and mitigation of contamination on the site will be the responsibility of the developer, not the Town, and this should be included in the lease.
- Town Meeting should have the opportunity to vote on this zoning amendment, because democracy is important and citizen initiative to bring this petition forward should be respected.

Planning Board members also made some recommendations to address concerns raised by citizens at the public hearing. One had to do with deleting the second sentence from the Procedures section under the Special District Regulations in order to ensure that special permit findings not be based solely on the conceptual designs presented during the zoning change process. **Deletion appears below bracketed and in bold.**

Additionally, it was suggested if the Director of Health and Human Services feels it is warranted that the language for Use 36A which requires a review of the proposed use and operation by a recognized expert should be incorporated into the requirements for Use 36B. The proposed additional language could be inserted after "shall be reviewed and approved in writing by", and before "the Fire Chief and Director of Public Health and Human Services, and read: "an independent, recognized expert". **Addition appears below bracketed and in bold.**

Lastly, any lease for the Brookline Place property should stipulate that the Town bears no liability for costs associated with contamination on the property and is indemnified against any consequences of the contamination. **Added language such as the following should be reviewed and approved by Town Counsel: "the tenant, not the Town, shall be liable for any costs or Federal and State requirements for environmental clean-up/mitigation associated with contamination and any consequences resulting**

from such contamination, including to adjacent parcels, and shall indemnify and defend the Town against such liability.

With the above conditions, the Planning Board recommended FAVORABLE ACTION on the following amendments.

To see if the Town will amend the Zoning By-law as follows:

- I. With respect to ARTICLE V DIMENSIONAL REQUIREMENTS, SEC. 5.06 – SPECIAL DISTRICT REGULATIONS, insert new subsections: 1. Purpose, 2. Establishment, 3. Procedures, and 4. Special Districts, with existing 1 through 3 converting to a., b. and c. under 4. Special Districts.**

SECTION 5.06 – SPECIAL DISTRICT REGULATIONS

1. Purpose

The following Special District Regulations recognize that unique land use, environmental, architectural and other physical conditions present within the Town may require detailed neighborhood, district or site planning and design review to insure: orderly and planned growth and development; historic and natural resource conservation; residential neighborhood preservation; economic viability of commercial areas; and concurrent planning for transportation, infrastructure and related public improvements. To insure that the dimensional and related requirements of the Zoning By-Law address these unique conditions, Town Meeting, from time to time, in accordance with MGL Chapter 40 A, may establish Special District Regulations and the Board of Appeals may consider applications for Special Permits based on those regulations.

3. Establishment

The establishment of Special District Regulations shall be based on one or more of the following:

- d. A study of land use, building, environmental, economic, architectural, design or other physical features of an area or district that defines the conditions and purposes supporting the establishment of Special District Regulations and the geographic area that will be subject to the regulations.
- e. The Comprehensive Plan, neighborhood or commercial area plan that defines an area where Special District Regulations should be applied.
- f. A conceptual or schematic design plan for one or more parcels of land or buildings within a district that will benefit from Special District Regulations.

3. Procedures

Applicants for Special Permits, subject to Special District Regulations, shall submit to the Board of Appeals the supporting studies and plans defined by Section 5.06.2. **[These plans or studies, which serve as the underlying basis for establishing Special District Regulations, will also serve as the basis for the Special Permit findings of the Board of Appeals, along with the standards under Section 5.09.4. Community and**

Environmental Impact and Design Standards and Section 9.05.1. Conditions for Approval of Special Permit.]

4. Special Districts [insert present sections 5.06 1-3 as subsections a, b and c]

II. With respect to a ZONING MAP CHANGE

- 1. Change the G-2.0 (VS) zoning district on the zoning map to GMR-2.0.

III. With respect to ARTICLE III, ESTABLISHMENT OF ZONING DISTRICTS, SECTION 3.01 – CLASSIFICATION OF DISTRICTS

- 1. Change 2. c. to read General Business (G) and General Business and Medical Research (GMR)
- 2. Replace 2.c.7 to read GMR -2.0 (Refer to Sec. 5.06, Special District Regulations)

IV. With respect to ARTICLE V. DIMENSIONAL REQUIREMENTS, SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS, add a new line in the Table after G-2.0 for the new district GMR- 2.0 as follows:

SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS							PBI ¹¹		MINIMUM YARD ³ (feet)			OPEN SPACE (% of gross floor area)	
DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	PBI ¹¹ NB ONLY	LOT WIDTH MINIMUM (feet)	HEIGHT ⁹ MAXIMUM	B	NB	Front ^{1,6}	Side ²	Rear	Landsc.	Useable ¹³
GMR- 2.0	Any Structure or principal use (dwelling-footnote 5)	none ⁴	2.0	2.5	none ⁴	45	60	100	none	none ⁷	$10 + \frac{L^8}{10}$	none	none ⁵
			4.0 ¹⁷	N/A		125 ¹⁷	N/A	N/A					

Insert the following new footnote 17 after the Floor Area Ratio Maximum and Height Maximum permitted within the GMR-2.0 District, as shown in the above revised Section 5.01, TABLE OF DIMENSIONAL REGULATIONS and in the footnote section below the table.

17. See SECTION 5.06 – SPECIAL DISTRICT REGULATIONS, 4. **General Business and Medical Research (GMR)**

V. With respect to ARTICLE V - DIMENSIONAL REQUIREMENTS, SECTION 5.06, SPECIAL DISTRICT REGULATIONS add a new paragraph d. under Special Districts, to read as follows:

d. General Business and Medical Research (GMR)

- 1) All applications for new structures, outdoor uses, and exterior alterations or additions in the GMR-2.0 District **which exceed a floor area ratio of 2.5** or

a height of 100 feet shall be permitted only on a lot no less than 50,000 square feet and no greater than 65,000 square feet in area and shall be subject to the requirements of § 5.09, Design Review, obtain a special permit per § 9.03, and meet the following requirements.

- f) The maximum height shall not exceed 125 feet and the maximum gross floor area ratio shall not exceed 4.0.
 - g) no less than **25%** of the Lot Area shall be devoted to landscaped open space.
 - h) no less than 60% of the parking spaces required by the Board of Appeals shall be provided completely below grade.
 - i) no less than 25% of the provided parking spaces shall be offered to residents for overnight parking.
 - j) no less than 1% of the hard construction costs of constructing a building on a Lot (exclusive of tenant fit-up) shall be devoted to making off-site streetscape improvements (such as, but not limited to, lighting, street furniture and widening sidewalks) and undertaking transportation mitigation measures. A plan of the proposed off-site streetscape improvements and a description of the proposed transportation mitigation measures shall be submitted for the review and approval of the Planning Board or its designee.
- 2) The parking requirements for applications in the GMR-2.0 District in light of the proximity to rapid public transit shall be as follows:
- e) **retail use:** one parking space per 350 g.s.f. of floor area
 - f) **office use:** one parking space per 600 g.s.f. of floor area
 - g) **research laboratory use (Use 36B):** one parking space per 1,000 g.s.f.
 - h) The number of parking spaces for the above uses in a GMR-2.0 District may be reduced by **special permit**, however, by no more than 15%, where it can be demonstrated to the Board of Appeals that it is warranted due to provisions in a Transportation Access Plan that includes recognized Transit Demand Management programs. A **Transportation Access Plan Agreement** shall be a condition of the special permit, shall be submitted for review to the Director of Transportation and the Director of Planning and Community Development, and shall require an annual report to the Director of Transportation. This **annual report** shall be accepted only after a determination by the Director of Transportation and the Director of Planning and Community Development that the Transportation Access Plan is working satisfactorily, and if not, that the plan will be changed and implemented to their satisfaction.

- 3) A special permit granted under this section shall lapse within 2 years if a building permit is not issued and construction has not begun by such date except for good cause.

VI. With respect to ARTICLE IV, USE REGULATIONS, SECTION 4.07 – TABLE OF USE REGULATIONS:

Add a Principal Use 36B in SECTION 4.07 – TABLE OF USE REGULATIONS with the following:

Principal Uses	Residence				Business			Industry
	S	SC	T	M	L	G	O	I
<p>36B. Research laboratory for scientific or medical research, with a Biosafety Level of Level 1 or Level 2 as defined by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, and National Institutes of Health, provided the use is <u>located on a lot with no less than 50,000 square feet and no more than 65,000 square feet in area and is</u> operated in compliance with all town, state and federal health and safety regulations, and that thirty days prior to a Board of Appeals hearing on the use, and annually, a report detailing hazardous materials operations, processes, disposal and storage shall be reviewed and approved in writing by [an independent, recognized expert,] the Fire Chief and Director of Public Health and Human Services.</p> <p>* Permitted by Special Permit only in a GMR-2.0 District</p>	No	No	No	No	No	SP*	No	No

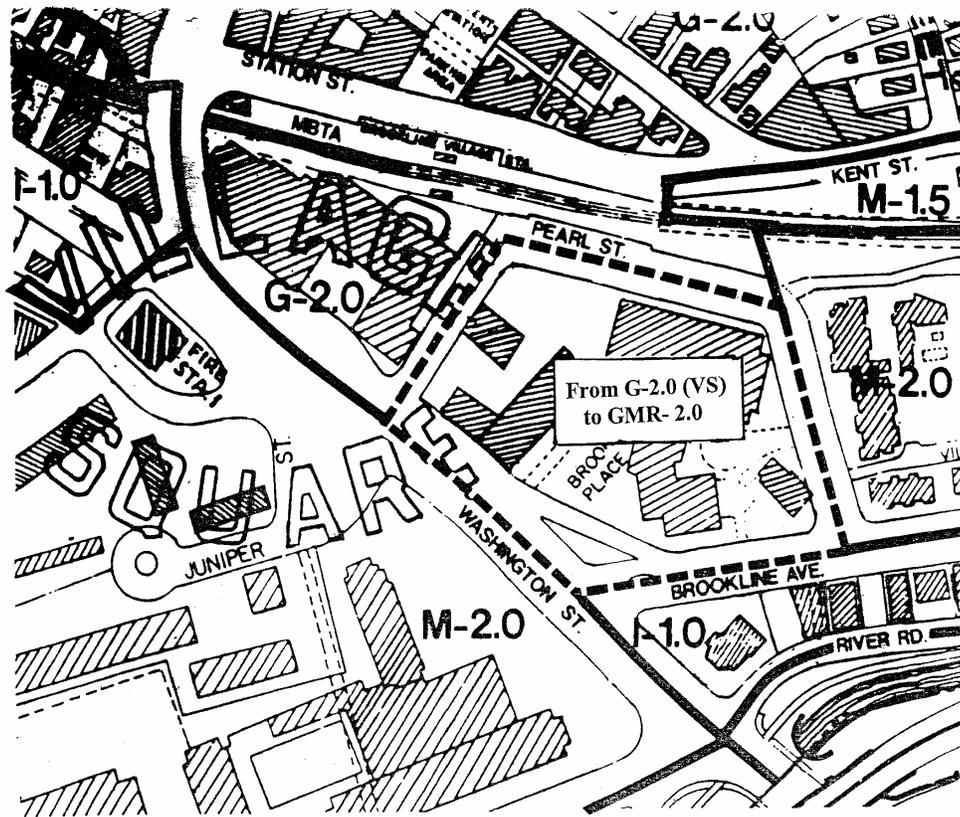
VII. With respect to ARTICLE V, DIMENSIONAL REQUIREMENTS, SECTION 5.21 – MAXIMUM FLOOR AREA REGULATIONS (PUBLIC BENEFIT INCENTIVES):

Insert “,GMR-2.0” in Table 5.02 after “G-2.0” in the heading of the third column.

VIII. With respect to ARTICLE V, DIMENSIONAL REQUIREMENTS, SECTION 5.32 – EXCEPTIONS TO MAXIMUM HEIGHT REGULATIONS (PUBLIC BENEFIT INCENTIVES):

Insert “,GMR-2.0” in paragraph 1 after “G-2.0”.

or act on anything relative thereto.



PROPOSED GMR-2.0 ZONING MAP AMENDMENT

- AREA OF ZONING CHANGE
- ZONING BOUNDARIES

CHANGE GENERAL BUSINESS (VILLAGE SQUARE), G-2.0 (VS)
TO
GENERAL BUSINESS AND MEDICAL RESEARCH, GMR-2.0

SELECTMEN'S RECOMMENDATION

Article 1 of the Special Town Meeting, which is the zoning article related to the proposed B2 project, is an alternative approach to the petition language submitted under Article 12. It was reviewed by the Planning Board on May 6, 2004. This Board reviewed it, along with Articles 13 and 14, on May 11. We will review them again and vote on them at our May 18 meeting, a date that is after the mailing of the Combined Reports. Therefore, a Supplemental Report that includes the Selectmen's recommendation for Articles 13 and 14 of the Annual Town Meeting and Article 1 of the Special Town Meeting will be mailed prior to Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee will provide information on this article, along with other B2 articles, in a supplementary mailing prior to Town Meeting.

XXX

ARTICLE 1

BOARD OF SELECTMEN’S SUPPLEMENTAL REPORT

In evaluating this warrant article, the first hurdle was, “why should we go through this again?” Immediately after the March Special Town Meeting, we felt Town Meeting had spoken and it was time to move on to other issues of importance to the Town. Upon learning of the citizen’s petition, our initial response was hesitation. We saw evidence that the property owner had begun the process of leasing the vacant restaurant space, and knew that once that occurred redevelopment could not be considered for at least ten years. However, after talking with the petitioners and hearing from other constituents, and learning of the typical timeframe to actually lease a restaurant space the size of Skipjack’s, we were persuaded that it was worth supporting the petitioners’ request that Town Meeting consider again the rezoning proposal for 2 Brookline Place:

- ◆ The majority of Town Meeting had supported the rezoning—it simply fell short of the necessary 2/3 majority.
- ◆ Many Town Meeting Members who were unable to be at the Special Town Meeting asked us to give them a chance to be part of this decision as well.
- ◆ The petitioners represent a significant number of families in the neighborhood, who are strong supporters of the proposed redevelopment of 2 Brookline Place. Contrary to the image conveyed at Town Meeting, we learned that many neighbors want this project to move forward. Of the 61 signatures on the petition to introduce the warrant article, 60 live in this neighborhood. In fact, in Precincts 4, 5 and 6, the ones immediately surrounding the project, the majority of Town Meeting Members supported the rezoning.
- ◆ The petitioners listened hard to the debate at Town Meeting and felt they could offer some language changes that might make the proposal more acceptable to many Town Meeting Members, and asked us to give them that chance. Their sincerity and dedication was compelling; ultimately the beauty of our Town form of government is that any resident can ask Town Meeting to consider any proposal and we value the grass roots democracy that this article (and all citizen petitions) represents.
- ◆ We remain convinced that a negative decision on the 2 Brookline Place rezoning would have a chilling effect on any commercial development in Brookline in the near future, resulting in Brookline continuing to endure the impacts of development just over its borders without realizing the economic benefits and seeing luxury residential as the only new development in Town.

Once having decided it was worth pursuing, we were able to support certain changes that were set in motion by the petitioners' article. The first was a simple language repair—the petitioners, being citizens not lawyers or experienced Town Meeting Members, had worded certain parts of the article in a manner that was not legally sound. We asked the Planning Director and Town Counsel to fix it while retaining the intention of the petitioners' modifications to the original language. The new language, combined with the petitioners' changes, address some of the concerns raised at the Special Town Meeting:

- ◆ The open space requirement is nailed down at a 25% minimum. Several Town Meeting members had been unhappy with a conceptual site plan that showed 25% open space while the warrant language required only 20%.
- ◆ The biomedical laboratory use is restricted to this parcel. In response to Advisory Committee concerns in hearings prior to the March Town Meeting, we had made an attempt to limit the application of the new use to this parcel by a crude mechanism—setting a minimum and maximum lot size that effectively restricted the use to this site. However, with a little more time and forethought, at the petitioners' request, we were able to devise language to establish a thoughtful framework for the new use in creating a General Business and Medical Research district.
- ◆ The Planning Director was able to craft language to reassure Town Meeting that the rigorous design review that will occur after Town Meeting will be conducted within the framework of the design concepts introduced through the Project Review Team process and at Town Meeting. This addresses the concerns expressed by many Town Meeting Members that the design representations at Town Meeting could change significantly during design review, while allowing flexibility for the give-and-take of post-Town Meeting design review.

After the revised language was discussed at numerous Town-wide meetings, additional changes were proposed an accepted by the petitioners, and are now included in our recommended language:

- ◆ Height is reduced from a maximum of 125 feet to a maximum of 115 feet. The Advisory Committee requested this change, since the feedback they had received from Town Meeting Members who had voted "No Action" in March indicated that the single biggest concern was height. Since the developer had always maintained that the FAR (Floor Area Ratio) was about economic viability while the height was about good design, this seemed reasonable and the Advisory Committee approached Roger Cassin through the petitioners. Mr. Cassin agreed to this further height limitation.
- ◆ Parking requirements are maintained at the original level, but the Board of Appeals is given some flexibility in allowing modern parking systems which may use less land and therefore support the reduced height of the building. This follows creative suggestions by neighborhood representatives that urged the consideration of off-site and other non-traditional parking solutions.

With the changes discussed above, we now have a warrant article that merits consideration by this Town Meeting. While the objections raised at Town Meeting have been further addressed, the benefits of the proposed redevelopment have not been in any way reduced:

- ◆ Increased vibrancy for Brookline Village. The need for more foot traffic to retain small retail shops in the Village could not be more apparent. Further closings, and the replacement of retail with service, are evident to even a casual passer-by. A commercial building at 2 Brookline Place may not solve the problem alone, but we've yet to hear any compelling alternative of how to address the problem without this building.
- ◆ Attractive new open space in an area of Town where it is needed and will be appreciated. The petitioners made us realize how many neighbors are interested in this new open space and saw it as a significant neighborhood amenity.
- ◆ Improvement to the streetscape and features are desirable and represent a credible first segment of the broader improvements envisioned in the Comprehensive Plan. The new Route 9 crossing to improve pedestrian and bicycle safety, the improvements offered for the T station and the new street trees on Route 9 are examples of what many view as enhancing the quality of life for the neighborhood.
- ◆ Significant tax revenues which will be generated here can forestall the projected cuts to programs and services. This project will generate approximately \$1 million/year in net new tax revenue at a time when all predications point to lean years ahead. Failure to seek solutions to our Town's revenue needs, when the population has repeatedly spoken out about its desire to maintain high service levels, would be irresponsible. The lease arrangement guarantees that the taxes anticipated will indeed materialize.

Furthermore, the issue of contaminated soils contained below the surface of the site was raised. We were, frankly, surprised to learn that this was a surprise to people. Back in the 1980's when this site was an urban renewal site, there was widespread awareness in Town of the nature of the site, having been occupied by automotive uses. Back then, the designation of any developer for the site came with the requirement that they conduct the clean up needed for any redevelopment because of the extent of the known soil contamination, despite the fact that the Town intended to retain ownership of the site. As with all redevelopment of contaminated sites, the environmental professionals supervised clean up and assured the Town that a level of "no significant risk" was attained on the site. Such a designation always is conditional on the existing uses, and further development triggers a new environmental review. During the PRT process, Mr. Cassin discussed the site as needing further clean up for a new use, and specifically sited the soil removal as one of the fixed costs in his development pro forma. We saw this as a BENEFIT of the redevelopment. As Mindy Lubber, the former Regional Administrator of the Environmental Protection Agency, and former director of MASSPIRG, and former Town Meeting Member stated:

Environmental advocates have long been promoting “brownfields” development, which simply means that development of sites with contaminated soils ADVANCES the cause of the environment. Historical practices, such as simply dumping used oil on the ground, have created a plethora of “dirty” sites throughout the Commonwealth. Redevelopment of the 2 Brookline Place site will do more to foster a cleaner site than not acting, and it should be championed by anyone interested environmental improvement.

But simply responding to the petitioners’ exhortations, fixing problems with the warrant language, responding to Town Meeting Member concerns, and reassuring Town residents that the environmental issues are being addressed is not enough. Town Meeting delivered a very clear message in March: the Selectmen were not perceived as genuinely interested in listening to all constituents and responding to a wide variety of worries about development in this Town. Citizens across the Town are not happy with what appears to be development gone awry. Many residents worry about things like regional housing pressures that push values up to outrageous levels and keep young middle class families out; others are upset with the seemingly rampant pattern of tearing down 2-family homes and building 12-unit condo buildings; we know there is outrage at 40B and its seeming ability to ride roughshod over our local zoning; we hear about developments in neighboring cities that will impact us but don’t consider us in their evaluation; and some see big box retail encroaching on our small town feel. Most troubling to us was that many people do not see the Selectmen as sharing those concerns, but rather as aiding and abetting the development forces.

We heard that message.

There are real issues; some of them involve forces outside our control, but unless we feel like we’re all working together, we won’t succeed. The Selectmen need to win back that trust, and we learned that very clearly at the Special Town Meeting and the series of Comprehensive Plan forums and other meetings since then.

We understand the need to demonstrate credibility as advocates for all the citizens of this Town, and that’s not something that can happen in a matter of weeks. But we have been talking about this, thinking about this and working hard to begin to address this. For the immediate project at hand, we offer the following assurances:

- ◆ The Design Review process for this project, should Town Meeting approve the zoning, will be rigorous, thoughtful and inclusive. Residents living in the immediate neighborhood will be included with the best of Brookline’s professional volunteers and the developer’s excellent design team to make this building and site spectacular. Meetings will be broadly noticed and open. As Selectmen, we will follow this closely and take responsibility for the quality of the process and product.

- ◆ Careful attention will be given to traffic issues, with a view to using the resources generated by development to mitigate long-standing problems in the area. Traffic will be the subject of serious review and evaluation, and mitigation measures will be thoughtfully designed and implemented.
- ◆ The Selectmen are committed that this project be the first segment of the implementation of the Brookline Village Gateway vision outlined in the draft Comprehensive Plan. We see the off-site improvements funded by the developer as the seed money for attracting resources for the broader improvements desired here. We are committed to focusing Town resources and aggressively pursuing other resources to make this vision a reality. The inclusion of Winn Development as a partner in this effort has obvious benefits to the Town and increases our likelihood of success in attracting outside resources.

For those who remain skeptical, we invite you to join with us and make sure we get it right. Challenge us to be as inclusive and responsive as we intend to be by participating and questioning. It works best if it's not "us versus them" but "all us". Some of the best ideas for improving this project came from those opposing it—the green building principles, the open space requirements, the restriction of lab use to levels 1 and 2—because they were participants. Hold our feet to the fire, even as we are holding the developer's feet there. We urge you not to remain outside criticizing in, but to be inside helping to make it right.

Finally, let's all be very clear about one thing—failure to pass the zoning article before this Town Meeting spells an immediate end to this project for at least ten years. You may say, "I've heard that before" and you'd be right. Winn Development did say they would not be waiting any longer and indeed did proceed with the process of leasing the restaurant space immediately after the March Town Meeting. The only thing that brought them back to the table was the relentless urging of the citizen petitioners who argued that they had new energy and reason to be hopeful about a positive Town Meeting action. Plus, the process of leasing takes a few months, and Winn Development agreed to proceed with the leasing but hold off on signing a lease pending this Town Meeting, as there would be minimal time lost in renting the space since the time between Town Meetings coincided with their own due diligence period on the releasing. The carrying costs of keeping this space vacant are not a real choice moving forward—they have a tenant, are ready to sign a lease and will sign a lease immediately after Town Meeting if the zoning change is rejected.

On May 18th the Selectmen took up the amendment offered by TMM John Bassett. The principal concern Board members expressed was that the amendment was not supported by the multiple professional analyses that had been conducted on the developer's pro forma. Furthermore, Mr. Bassett told the Board in their public hearing that the density maximum of his amendment was selected randomly and not based on any study of feasibility. The Board believes that passage of this amendment will have exactly the same impact of no zoning change – no project. The Board, therefore, voted NO ACTION on the amendment by a vote of 5-0.

The 2 Brookline Place offers the Town a chance to embrace transit-oriented smart growth development in a location long recognized by nearly everyone in Town as appropriate for commercial development. The project has gone through extensive public review and will get even better as it continues to develop under careful public scrutiny. The developer has demonstrated enormous flexibility and responsiveness to community concerns, and has an extensive track record of high quality development and management. This is simply an opportunity not to be wasted, and the Selectmen unanimously and enthusiastically recommend **FAVORABLE ACTION**, by a vote of 5-0 taken on May 18, 2004, on Article 1 as moved by the Advisory Committee.

ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

BACKGROUND

Amendments to the G-2.0 (VS) Village Square Zoning District were not adopted at the Special Town Meeting in March 2004. After the defeat of the re-zoning proposal in March, a number of proponents of the proposed B- 2 parcel project and district re-zoning submitted a revised warrant article in hopes of addressing some of the concerns they heard voiced at Town Meeting. Thus a citizen petition Article 12 was placed on the warrant for the June 1, 2004 Town Meeting. The major changes in the petitioners' zoning article were the limiting of Level 2 lab use to the Village Square District and an increase in the required open space to a minimum of 25% from the 20% minimum in the article defeated in March 2004. After reviewing the citizens' petition, Bob Duffy, Director of Planning and Community Development and David Turner, Town Counsel, redrafted the article so that the limited use and unique scale and height of the proposed project that is the subject of the re-zoning question would be part of broader language addressing the purpose of Special Districts town-wide. Since the warrant had been closed at that time, a Special Town Meeting within the Annual Town Meeting on June 2, 2004 was called to address the zoning article that had been redrafted.

The following sections contain a review of the March 2004 Zoning Article followed by a list of changes as proposed in Article 1 of the Special Town Meeting as written by the Town.

Review of the March 2004 Zoning Article

The original zoning articles introduced for consideration at the March 4, 2004 Town Meeting were offered as a result of the work of the Town's Economic Development Advisory Board (EDAB). In follow up to the work of EDAB's Office Space Task Force, last Spring EDAB approached the owner of Two Brookline Place regarding opportunities for re-developing the site to create additional tax revenue. Two proposed uses have been suggested: a biolab or an office building, with a laboratory apparently being the developer's preferred option. EDAB submits that the

proposed development will generate approximately \$1,000,000/year in new revenue. It is not anticipated, however, that this revenue stream will be fully available until approximately FY 2009. The proposed zoning changes were originally offered at the Fall Town Meeting, but due to many unanswered questions and concerns about the speed with which this was being pursued, the Selectmen requested that it be referred back to the Planning Board for re-consideration at a future Town Meeting. Town Meeting approved such referral.

In the intervening period, additional meetings of the Project Review Team were held. The warrant articles were modified and put on the warrant for the Special Town Meeting. The major changes to the original article are that the proposed height of the structure has been reduced by one floor (ten feet) by reducing parking requirements and moving some parking underground and the owner has agreed to convey the property to the Town which will then execute a ground lease to the developer. This was done in an attempt to circumvent the potential problem of future conveyance to a non-profit entity.

As proposed in the March 2004 Special Town Meeting, the zoning for the Village Square (VS) General Business District included the following parameters and changes:

- increase the allowable height and floor area ratio for buildings in the district to 125' plus 10' for a mechanical penthouse and a FAR of 4.0
- designate the district a Special District with the following conditions and allowances:
 1. New buildings with a FAR greater than 2.5 and a height greater than 100' will require the 5.09 Design Review process and must meet the 9.03 requirements for special permits
 2. 20% of the lot must be landscaped open space
 3. 60% of parking must be below grade
 4. 25% of parking shall be offered to residents for overnight parking
 5. 1% of hard construction costs will be designated for off-site streetscape improvements

Specified parking requirements (outlined in §1. C. b.) may be reduced by 15% by special permit and demonstration of a viable Transportation Access Management Plan (TDM) approved annually by the Director of Transportation and the Director of Planning and Community Development.

The public benefits from development of the B2 parcel as envisioned in the originally proposed zoning were:

- 1) Increase in tax revenues of approximately \$ 1million per year from the parcel
- 2) Increased “foot traffic” and commerce in Brookline Village

- 3) Overnight parking for residents
- 4) Transfer of ownership of the land to the Town
- 5) Development of a “gateway” to Brookline with connections to the Emerald Necklace.
- 6) 1% of hard construction costs to off-site streetscape improvements

Summary of the differences between the March 2004 Special Town Meeting Article and Article 1 offered for the June 2004 Special Town Meeting:

- 1) New language has been added to the Special District Regulations on the purpose, establishment, and procedures. These paragraphs detail the reasons for creating special districts, set requirements for studies and plans to support creation for special districts, and procedures for a request for a special permit under the special district regulations.
- 2) The new special district being created is designated the General Business and Medical Research (GMR-2.0), instead of Village Square General Business District to allow for medical research labs as well as general and medical offices and retail uses.
- 3) The requirements for the special district that must be met to get to the 125’ and an FAR of 4 was increased to a minimum of 25% landscaped open space, as opposed to 20%.
- 4) The Table of Dimensional Requirements for the GMR-2.0 district allows a height of 60’ in a buffer zone, and a height of 100’ and FAR of 2.5 in a non-buffer zone if public benefits are provided. This is identical to the current zoning for the G-2.0(VS) district, which had been deleted in the March 2004 zoning amendment. Appropriate references for the new zoning district GMR –2.0 have been added to Sections 5.21 Maximum Floor Area Regulations and 5.32 Maximum Height Regulations.
- 5) The new research laboratory use (36B), is now restricted to the GMR-2.0 district by special permit, and is not allowed in other General Business (G), Business and Professional Office (O), and Industrial Services (I) districts.

The Planning Board held a public hearing on May 6, 2004 to consider the petitioners’ zoning article and Article 1 of the Special Town Meeting. As a result of the public input, the Planning board voted NO ACTION on the petitioners’ Article 12, and FAVORABLE ACTION on Article 1 of the Special Town Meeting with two changes.

Planning Board Recommendations

- 1) Use 36B as amended requires that the proposed use and operation be evaluated by an independent, recognized expert, in addition to the Director of Health and Human Services and Fire Chief as currently required for Use 36A.
- 2) **Deletion of the second sentence under 3. Procedures in Section 5.06 Special district regulations in order to provide more flexibility during the special permit design review process and not require that the special permit findings be based solely on the conceptual designs presented during the zoning change process.**
- 3) The addition of language to Article 14, that the lease shall provide that the tenant, not the Town, be liable for any costs or Federal and State requirements for environmental clean-up/mitigation associated with contamination and any consequences resulting from such contamination, including to adjacent parcels, and shall indemnify and defend the Town against such liability.

Amendments to Article 1 of the Special Town Meeting

John Bassett offered an amendment on behalf of the Brookline Village Coalition. The changes offered are a maximum building height of 100 feet and an increase in maximum FAR from 2.5 to 3.3. In addition, the 36B lab use is not allowed. The Advisory Committee considered this amendment and voted 1 in favor, 14 opposed, 1 abstention.

Nancy Daly offered an amendment based on ongoing discussions between the developer and citizens. The specific Advisory Committee VOTE and language of the article with these amendments are found in the RECOMMENDATION section of this report. In summary, the amendment reduces the maximum height from 125 feet to 115 feet with a maximum FAR of 4.0, changes the description of “landscaped open space” to “landscaped [**and useable**]” open space, and provides alternative parking options for the project that [**employ a tandem parking arrangement and/or mechanical devices that enable vehicles to be stacked vertically inside a garage subject to a report and recommendation from the Town’s Director of Engineering and Transportation.**]

DISCUSSION

Financial History of the B2 Site:

With the help of a number of different Town departments and a thorough review of Town records, we have compiled the following financial history of the site that is the subject of this warrant article.

The Town of Brookline acquired the land in the vicinity of Brookline Avenue, Washington Street, and Pearl Street beginning in 1969. It paid \$788,800 for the total land it acquired via legal “takings,” for the public purpose of redevelopment of the area. Later the Town sold some of the land it had acquired for \$423,886. The remaining \$364,914 was paid for by one or more Community Development Block Grants from the federal government. The Town did spend approximately an additional \$2,000,000 to make infrastructure improvements to the area, including upgrading roads and sidewalks, etc. Among the businesses that had been on the site which is now owned and/or leased by Winn Development were Red Cab, Brookline Ice & Coal, several auto repair and gas station businesses, a commercial roofing company, and the Town of Brookline’s Water Department.

Initially, the Town had some difficulty finding a developer that was interested and able to redevelop the property. Eventually, Winn Development came forward and made an offer that the Town considered acceptable. It gave the Town a better monetary return than any of the other offers the Town had considered. Winn Development built affordable housing on the site to the north of Pearl Street and the south of the T tracks.

The remaining parcel was divided into three areas: Parcel A, which now contains the building housing Bertucci’s and which is the parcel presently under discussion for redevelopment; Parcel B which contains One Brookline Place; and Parcel C, which contains the old Waterworks building, now a daycare center. Under the agreement with Winn Development, which was signed in July 1984 but which went into effect in July 1985, Winn leased Parcel A for \$40,000/year; Parcel B for \$30,000/year; and Parcel C for \$30,000/year. The lease was for a term of 60 years. Winn had the option to buy all the parcels for \$1,000,000.

In addition, Winn was obligated to pay taxes on the property, to clean up environmental hazards, as necessary for building; and to pay an additional \$2,000,000 upon purchasing the land, or selling its interest, or refinancing, or the expiration of the lease. This amount was to repay the Town for the \$2 million in infrastructure improvements that it had made to the area. In the initial lease \$800,000 of that \$2 million was to be attributed to Parcel A. However, in July 1985, at the request of Winn Development, the lease was amended so that the \$2 million additional payment would be attributable solely to Parcel B (One Brookline Place) because that was the parcel that it anticipated would be worth the most after construction of an eight story building and garage. The Town, whose main interest was in receiving back the money it had expended on infrastructure improvements, was amenable to this change. In addition, the Amendment provided that the Town would receive the full \$300,000 if the developer bought Parcel A, and the Developer would no longer receive receive a credit of 16.66% of the prior rent payments toward the purchase price, as had been provided for in the initial lease.

To date the Town has received the following from the limited partnership formed by Winn Development to hold Parcel A:

Lease payments of \$40,000/year From 1985 through 2000	\$ 640,000
Sale of Parcel A to Limited Partnership in 2001	<u>\$ 300,000</u>
Total Sale and Lease	\$ 940,000
Taxes 1987 through 2004 Attributable to Parcel A	\$1,981,059

[Additionally, the Town received \$2,000,000 from a Winn Development Limited Partnership in 2001, though this amount was totally attributed to Parcel B (One Brookline Place)].

Financial Analysis of the Proposed Project:

While keeping in mind that we are being asked to vote on a change in zoning and not a specific project, the fact that the Town's Economic Development Advisory Board ("EDAB") requested that the developer consider commercially redeveloping this site and the owner/developer then spent considerable time and expense working with the Project Review Team ("PRT") and in developing proposals for the site, necessitated our close review of the specific proposals that Roger Cassin of Winn Development has put forth.

We heard from a number of Town Meeting Members and people who live near the proposed project and many were concerned about the size and height of the project. In response to those who asked if it needed to be as massive or as tall as proposed, we again reviewed the finances of the proposal.

Ken Lewis, a real estate finance professional and a member of both EDAB and the PRT, did a detailed financial analysis to challenge the numbers and assumptions which went into the developer's Pro Forma analysis to determine all the costs that would go into developing the site and what size the building must be to make it financially viable. Neil Wishinsky of the Advisory Committee later took the Pro Forma and Mr. Lewis' analysis and retested it to see if it was accurate. Most recently, Cliff Brown, a Brookline citizen and a consultant who specializes in real estate financing again reviewed the numbers with the specific charge of determining if the project was financially feasible at a lower FAR. Notably, in an unusual show of cooperation, the developer allowed each of these people to review some confidential information, with the understanding that this information would not become public.

FAR:

Roger Cassin, the developer, continues to assert that he would not be able to obtain the roughly \$60 million he needs to finance this project unless he has an FAR of 4.0. This FAR would be denser than anything currently in Brookline, although the hotel has an FAR of 3.3. Mr. Lewis concluded that at an FAR of 4.0 the return on cost for a commercial developer at this site would be “tight, but acceptable, assuming the building is substantially pre-leased to an LMA tenant with strong credit. This return is not sufficient to justify speculative development.”

The reason for the high FAR is that developing the site has high fixed costs including demolishing an existing income producing building, plus the land is marshy and ground water drains toward the Muddy River so building there with proper environmental protections will be expensive. A key point in a determination of whether a project is financially feasible, is computing the projected return on equity (ROE) and the debt service coverage ratio. These are two key elements a lender reviews before making a decision to finance the project.

Return on equity, at its most simple level is $\text{Income}/\text{Investment}$. So if for example you have \$100 in the bank and you earn 10%, your return on equity is: $10/100$ or 10%. If you earn \$9 instead of \$10, the new equation is $9/100$ or 9%. On the other hand, if you invested \$99 instead of \$100, the new equation is $10/99$ or 10.1%. The point to remember is that the ROE equation is more sensitive to changes in the numerator. In this example, a \$1 change in the numerator (the top number in the division) changed the ROE by 100 basis points. A \$1 change in the denominator (the bottom number in the division) changed the ROE by 10 basis points. In a real estate project, determining what goes into the calculation of income and investment is quite complex and full of assumptions but in the end, it comes down to this simple equation.

The debt service ratio is $\text{Net Cash Flow}/\text{Yearly Debt Service (Principal and Interest)}$. This shows a lender how much cash a property owner will have after the debt is paid. Buildings have many expenses and the higher the projected ratio, the more viable a lender will believe the project to be.

Mr. Lewis has been using a target ROE of over 9% and a target debt service ratio of over 1.30. In the fall, the subcommittee also received information. The model used by Mr. Lewis appears to make conceptual sense. Prior to the March Special Town Meeting, the Planning and Regulation subcommittee then recreated the Lewis model substituting certain numbers from the Assessor’s report where available.

Some key assumptions in the recreation of the Lewis analysis are:

	Office	Lab
Office/Lab Rents (from Assessor)	\$40 sq/ft Gross*	\$40 sq/ft Triple Net*
Retail Rents	\$30 Sq/ft Triple Net	\$25 Sq/ft Triple Net
Office/Lab Shell Construction Costs including Tenant Improvement Allowance (from Mr. Lewis)	\$175 Sq/ft	\$265 Sq/ft
Imputed Value of Existing Building (from Mr. Lewis)	\$8,000,000**	\$8,000,000**
Lender Interest Rate Assumption	6.5%	6.5%

** The Lewis analysis uses \$42 sq/ft gross for the office rent and \$44 sq/ft triple net for the lab rent respectively. We have chosen to use the Assessor’s rent figure as a measure of current market conditions as it yields a more conservative analysis. We believe that both figures are aggressive and reflect the “edge of the envelope” of what rents can reasonably be charged.*

***The assessed valuation of the existing building is \$9,050,000. For this portion of the analysis, we are using Mr. Lewis’ lower imputed value of the existing building.*

Using the model, we saw that both the office and lab scenarios at FAR 4.0 exceeded Mr. Lewis’s stated target levels.

We asked Mr. Lewis to remove 1 floor from the analysis. In analyzing the cost associated with such a reduction, he saw that there would be no reduction to certain fixed costs such as the general conditions, site work, foundations, underground parking, main lobby, roof, elevators, and mechanical systems. There would be some savings for the materials and labor associated with the top floor, such as masonry, steel and windows. Given this, he used a marginal cost reduction of 33% of the total shell costs per sq/ft. He cautioned, however, that to get a truly accurate figure a professional cost estimator would have to be engaged. Once the floor was removed from the model, the project did not meet the target ROE and Debt Service Ratio.

The analysis was also done with a less optimistic lending interest rate figure of 8%. With the assessor’s rent figure of \$40 per sq./ft. both the Office and Lab scenarios begin to come under the target ROE and Debt Service ratios. This sensitivity analysis highlights the fact that the project’s financial feasibility is close to the edge. The developer and his consultant themselves describe the project as “thin” in terms of getting it financed and only worth it to this developer because Winn Development has a history of holding onto the properties it develops and looking toward long-term, rather than immediate profits.

Subsequent to Mr. Lewis' initial analysis in which he concluded that there might be a slight reduction to the height of the building or underground parking, but that both would not be financially viable, the developer agreed with some suggestions from some members of the PRT to work on a proposal that would involve some underground parking (the figure that has been mentioned is 220 spaces), substantial open space of about 25% of the land, and a height of 125 feet, to get the FAR of 4.0. The proposal that was then developed also included 1% of the hard costs of construction to go to Town amenities in the area such as streetscape improvements and to give the land beneath the building back to the Town subject to a 95 Year lease, so that the Town could ensure that the property continued to remain on the rolls of tax-paying properties and did not become non-taxable due to non-profit ownership. Underground parking spaces, per space, cost roughly 250% more to construct, when the subsurface is wet, than aboveground spaces. The change from aboveground to underground parking alone adds nearly \$5 million to the estimated construction costs.

Neil Wishinsky of the Advisory Committee and Cliff Brown both reviewed the pro forma projections to answer the question of whether the FAR of 4.0 would really be necessary. They have each concluded that the FAR of 4.0 is necessary and that due to the high fixed costs of commercially developing this site, a reduction in the size of the project is likely to render it too risky for bank financing. As noted above, even at an FAR of 4.0 this project has some financial uncertainty. There is of course, the possibility that this project will not be developed if interest rates go up rapidly or any other variables change. But, the conclusion of the subcommittee is that the zoning must allow for the potential of an FAR of 4.0, subject to the trade-offs required during the Special Permit process, or it will not be commercially developed anytime in the near future.

Anticipated Tax Revenue:

It is important to realize that tax revenue begins to be realized within 3 years after the construction is initiated and increases to a maximal level within 6 years after project initiation. While the Commercial property is currently taxed at a rate of 1.75x the rate of residential property. The EDAB has asserted that commercial redevelopment of this site will generate substantial new tax revenue for the Town. How much additional tax benefit will, for many, be a major factor in forming an opinion on the project. The EDAB analysis estimated that the net tax benefit of a FAR of 4.0 would be \$1,000,000 per year.

In reviewing the EDAB's model, we saw that assessed valuation was computed a bit differently than how the Assessor computes the assessed valuation. The subcommittee then asked the Assessor's office to analyze the developer's proposal to estimate the tax benefit to the town using his methods of valuation.

Since both the EDAB and the assessor's forecasts attempt to predict the future, they must make a series of assumptions. If any of the assumptions change, the end result changes.

Key financial assumptions made by the Assessor (derived by taking the developer’s assumptions with adjustments as necessary to bring them in line with his view of current market conditions):

	Office	Lab
Rentable Office/Lab Sq/ft	199,554	188,722
Rent Sq/ft	\$40.00 Gross*	\$40 Triple Net*
Retail Sq/Ft	18,272	17,485
Retail Rent Sq/ft	\$30.00 Triple Net*	\$25.00 Triple Net**
# Parking Spaces	355	272
Parking Rent/Month	\$225	\$225
Tax Rate/Thousand	\$17.26	\$17.26
Capitalization Rate	10.65% Gross Rents 8.90% Triple Net 10.63% Parking	8.90% Triple Net 10.63% Parking

**With Gross rents, the owner is responsible for most building expenses including taxes. With Triple Net rents, the tenant is responsible for most building expenses including taxes*

***A lower retail rent figure is being used for the lab scenario under the theory that general office space will create a greater flow of visitors and have a larger number of employees, therefore making the retail space more valuable.*

Using these assumptions, after subtracting the taxes paid by the existing building, the Assessor’s office estimates approximate net revenue increases per year as:

	Estimated Value	Estimated Taxes	Net Increase
Office Use:	\$58,986,000	\$ 1,018,098	\$ 862,000
Lab Use:	\$81,486,000	\$ 1,346,901	\$ 1,190,000

The tax benefit would be phased in over a five year period, according to estimate of the Assessor’s Office. The numbers listed above represent the potential final tax assessment when the building is completed. Note that the Net Increase figures are rounded to highlight the fact that these are merely estimates of future revenues.

Also note that the assessor’s office believes that there will be not any loss of tax revenue during the period of construction because of the increased value of the land should the proposed upzoning be passed.

The large difference in estimated values between the two uses are due to the different kinds of leases (gross vs. triple net) between the two uses. This will be discussed further in the next section.

A change in any of these assumptions (or a change in the accepted capitalization rate) can have a profound effect on this tax benefit projection. Two examples are:

1. The tax rate has been steadily decreasing in recent years because the percentage increase in assessed valuation has been rising faster than the town's ability to increase its taxation (as capped by Proposition 2 1/2.) In FY 2003, the commercial tax rate was \$18.18. In the current fiscal year, FY 2004, it is \$17.26. If this trend continues, the expected net tax benefit could be lower than indicated in this projection.
2. The Selectmen have the authority today to reduce or eliminate the tax classification shift. Additionally, the Selectmen could take advantage of their new temporary ability to increase the tax classification shift beyond 175% at any time over the next 4 years. If they do, by the time the project comes on line, the maximum shift will be 170%. (The enabling legislation permits exceeding the 175% during the next 4 years but if Brookline takes advantage of the increased shift, during the 5th year and thereafter the maximum allowable shift is reduced to 170%.) This would reduce the commercial tax rate a bit and therefore reduce the realized tax revenue from the project somewhat. Given that we don't know what the Selectmen will do in this regard, we have not built this reduction into this projection. The Assessor's office estimates that should the maximum shift be 170%, the revenue enhancement due to the project would be reduced by 2.86% from the numbers stated above.

According to this analysis, the 2 Brookline Place project, if built, should produce a significant tax benefit to the town. This tax benefit would be phased in, however, not reaching its full effect until approximately FY 2009. Based on the assumptions used in the analysis, it appears that a lab will produce a much higher tax benefit than an office building. Given the uncertainties of long term projections of this type, the numbers computed by the assessor should be used as an indication of magnitude rather than a promise of a specific revenue enhancement number.

Lastly, according to the Assessor's office, to achieve a \$1 million property tax revenue enhancement, the tax rate would need to be increased by \$.09 per thousand. That is assuming, of course, that the necessary Proposition 2 1/2 override would pass.

Financial Conclusions:

As to the strictly financial considerations of this project, our conclusions are largely unchanged from those published in the Combined Reports for the Special Town Meeting:

1. If built, this project would produce significant tax benefits to the Town.
2. Commercial development of this site is not financially feasible under existing zoning, and in fact, it is highly unlikely that any project will occur on this site at any time in the near

future, unless the developer has the possibility of an FAR of 4.0, subject, of course, to the demands that would be placed on the project by the Zoning Board of Appeals.

3. This project appears to be financially feasible even with underground parking and 1% of the costs of construction going to improving amenities around the area, such as landscaping, access to the T, etc., and
4. The pro forma assumptions are sufficient to support a building made of good quality materials and to do the necessary environmental work on the site.
5. From a financial point of view a number of factors, other than FAR, involved in the project could be adjusted without rendering the project unfinanceable. However, the building may become less attractive to a tenant if made too short and wide, due to the lack of windows in the interior rooms and much greater space devoted to corridors.

During the course of this review of the project, we heard a number of aesthetic concerns, particularly dealing with the height of the project and with the design of the open space. These issues should be more fully explored in the Special Permit Process, if Town Meeting moves forward with the re-zoning. Requirements then generated by the Zoning Board of Appeals might affect the economic analysis of the project.

Issues:

Issues discussed at the April and May 2004 subcommittee public meetings mirrored those concerns voiced during the March 2004 Special Town Meeting with the addition of new issues – Special District Zoning and Activity and Use Limitation:

- 1) Massing (Height and FAR)
- 2) BioLab Safety
- 3) Traffic
- 4) Parking
- 5) Special District Zoning
- 6) Activity and Use Limitation

Massing:

During and after the PRT period of review and discussion, many conceptual models were made to test out various combinations of FAR, height and configuration - or "massing" (the rough shape than a particular building volume can take). The developer has maintained however, that they cannot build a feasible project below an FAR of 4.0 in the current the foreseeable future. It

is difficult for us to imagine interest rates dropping below those of the recent several years - and they are rising. Construction costs for materials and labor always continue to rise and have seldom dropped except during recessions. The market for different types of use - medical, office, hotel and residential and others have, and will continue to vary uncontrollably. In addition, both AC's and the PRT's separate analyses of the pro forma information revealed a "thin" feasibility of even the 4.0 basis. Does that mean we should halt this proposal and hold out till a time of better (or actually worse) economic conditions?

All this led the developer to settle on a laboratory/office-use "hybrid" concept. It would however, be flexible, because of the marketplace. Pure office space is not as viable in the current marketplace as labspace with associated office and conference rooms. The tenant fit-out could range from primarily all lab oriented, as just described - to all office - if the market shifted during the life of the building.

This zoning proposal asks for a maximum of 125-feet vs. the current 100 for the height of the roof above the ground. Height limits, however typically recognize the need for a building to have rooftop air-conditioning equipment, a stair tower and elevator penthouse, so the zoning gives another 10-feet for those items. Therefore the final total height allowed would be 135-feet vs. 110-feet overall at present. The hybrid lab/office building would however, need a larger amount of mechanical equipment on the roof - and possibly a 22-foot high noise-blocking screen wall around it all - but no higher than 135-feet in total.

However, the "good news" is that a hybrid building would be shorter than its pure office-use cousin. A lab use needs a taller floor-to-floor height to allow for extra ceiling-space for additional ductwork and equipment. The 125-foot maximum, nets out at a possible 113-foot high roofline vs. 125 for a typical office-only building - and it would have one less floor, also.

Models of a 113-foot hybrid show that it is perceivably, only slightly taller than a 100-foot one. Surprisingly - not effectively noticeable, according to one design professional on the Advisory Committee. Also, it's taller rooftop equipment room would only be noticeable from greater distances than the building would most often be noticed. From across Station Street, and the "T" stop it would be minimally seen, when at all. From the greater distances of the corner of Station and Washington Streets it is seen - but in the distance. Moreover Ten Brookline Place, in the foreground will loom more in the view - screening almost the entire view of Two, and appearing as tall - though actually lower.

To recognize the scale of Station Streets single-sided row of mid-19th Century, former industrial and mercantile buildings, the current concept proposal takes on a stepped form, and is lower on its Northern side. Station Street feels much wider - as a space - than across most streets because it doesn't have an "opposite side", until one sees the facing side of Pearl Streets buildings - another single sided street. Added together - it's much too wide to feel like one "street". To be sure, it is a vast area of open sky space - but with trolleys rumbling through - for it once was a true railroad right of way.

To be sure, some residents, businesses and artist studios on Station Street would lose a significant part of their view of the sky and the distant Brook House - but the latter is thankfully quite far away, and the total sky-plane is huge. There will be a loss of precious body warming sunlight on clear winter mornings for T-riders waiting for the frequent trains during the morning rush. Actually, the many riders who need to board at times as early as 8 a.m. see little early-morning sun at this location in the heart of the winter. The T-stop may be feasibly movable a short distance to the East - and pick up the sun again.

It would be negligibly different from a 100-foot, currently allowed structure. However, it could be more shadowed by one built closer to the Pearl Street sidewalk - which could rise immediately to 100-feet - under current zoning. That building could have easily been proposed instead and have 25-percent or more open-space - dedicated to the Rt. 9 "parkway" instead - as Winn's last project does. They are now willing to favor the Village side. So goes the changes in thinking that happen in design and planning over a span of time.

In Winn's proposal for B2, the side along the busy Post Road will bear the larger-feeling mass and height. However, it will again have a "stepped base", so that it will feel a lot like the present day nicely-scaled block of shops to the walking by pedestrian - the ones it will matter to the most. On the far side sidewalk, which is again, a long way away, a 100 or 113-foot building will be the tallest of the large buildings there. However, it may look more at home than the remaining older block does among the urban renewal bigger ones from the 60's and 70's.

The best thing might have been to have had the all original 19th-Century buildings remain to this day with new uses in them all along, but it would have only have held small business, offices and shops - like along the sides of the Village - and it would have competed with them also. In addition, neither Village or the Rt. 9 sides of the proposed building will ever feel like a canyon - because both streets are so wide.

To be sure, the present block on this Parcel 2-B site is mostly charming, with its maturing trees, mini-town green, and pocket-park layout. That part of it is a tribute to this developer's ideas at the time, and successes in revitalizing it in the 80's. Did this developer do it too well for their own good? It has however, its awkward and less appealing parts too, like the "sunken loading area", which is largely avoided by deliveries that would rather stay up on street level and block a lane of traffic instead - a problem remedied by the proposal.

In the end, we will have to trust that this developer - and not necessarily another that might follow them - will do the right thing again and plan open space that is just as successful and enjoyable. Hopefully they will also remove the short street that now enters from Rt. 9 for shops and the garage in the process too. Then the pedestrian path, that would be replicated through the property, will come out in a combined pedestrian oriented greenspace at Boylston.

A 100-foot building is not realistically less noticeable than a slightly taller one - maybe even one at 125 feet. The big "leap of faith" comes between the scale of what's there now - which is almost unnoticed or felt from Station Street - and the jump to 50 or 60-feet under current zoning. The allowed extra increase to 100-feet, by providing "public benefits", is to another level to be sure - but it's a matter of context also: the taller shapes will be at home with what is there now - and thank goodness the broader spaces of the streets on both sides of it.

A 100-foot building could also be arguably less "attractive" because, at the needed 4.0 FAR, it will shorter - but wider. The most compact form - allowing even more open space - would approach the graceless proportions of our Town Hall. Sometimes, a client (in this case us Town Meeting Members) just has to trust the abilities of the better recognized design professional - with few exceptions. Most of the banal examples in our built environment - unfortunately the majority of what we see - happened without skilled design professionals or caring clients and developers, during the last half century.

The precedent that this building would set, if allowed by Town Meeting, will really be as a benchmark of quality in appearance and designed-in form. If it results, in a future of more feasible economics, in the tearing down and building up of its neighbors - they will again be "encouraged" in the successful manner of this project, to rise to being it's equal, while being tailored and molded - by our Special Review process - to the adjoining lower scale of the Village where it meets it.

Biolab Safety:

There are four levels of biological laboratories based on the types of organisms studied. Level 1 labs are limited to research on agents not known to consistently cause disease in healthy adults. Level 2 studies agents associated with human disease hazards from ingestion, mucous membrane exposure, or breaking the skin. Level 3 and 4 laboratories study very dangerous organisms which can be transmitted through the air.

Dr. Alan Balsam, Director of our Health Department has had extensive experience regulating and monitoring biolabs when he worked for the City of Cambridge. Dr. Balsam put these risk levels in perspective. High school science labs are Level 1. Even level 2 labs pose only a very small risk to people outside the lab. Level 2 labs are often located near residential areas. There are, in fact, also presently a dozen Level 3 laboratories within a mile of Brookline. The greatest risk is for persons who work in or visit the labs.

Each laboratory would have to meet safety standards, would have to have a lab safety officer available to meet with town officials, and would be subject to periodic inspections by the Town. We have heard from a Town Meeting Member who works in a Biolab that construction of such labs needs to be done with appropriate and safe venting systems, and that any potentially dangerous material must be in contained areas so that biohazardous materials were not tracked through a

public elevator or lobby for instance. In general, the comments we heard from the public showed a preference for other uses besides a biolab. If a biolab is built the Special Permit and Town bylaws must be carefully tailored to ensure that is built with maximum safety and regular monitoring.

Dr. Balsam advised us that in his opinion, the risks of a Level 2 laboratory are manageable, but would involve significantly more work for his department. His department would be required to review the proposed laboratory at three different stages: design; construction; and throughout the life of the laboratory. Each of these reviews would require the use of outside expert consultants as we presently lack personnel with the necessary credentials (with the possible exception of Dr. Balsam himself) and the available staff time. Review of laboratory operations would include examining the tenants' safety plan; site checks twice a year; and having a seat on the tenants' Internal Bio-Safety Committee. At our meeting, Dr. Balsam advised us that these services would be performed by an outside consultant retained by the Town and that the cost of these services would be paid for by the developer or ultimately by the tenant if it is a triple net lease.

Acting Fire Chief Skerry has advised us that the Fire Department is currently prepared for Level 1 and Level 2 laboratories. They would not require outside assistance from a HazMat team unless a Level 3 laboratory was contemplated.

Traffic:

Between Fall Special TM 2003 and the Special March 2004 TM, the "Two Brookline Place - Traffic Impact Study" by Winn Developments consultant, *Howard, Stein-Hudson* (H/S-H) was finalized. Since March no new work has been done on studying the impact of traffic from a possible project at 2 Brookline Place.

But it's major conclusions still stand:

- that Rt. 9 is congested, and will be in the future *whether or not* this project is built, and will be improved only by *mitigation measures*;
- that a possible FAR 4.0 building will only "slightly increase (the) delay" at surrounding intersections;
- that the traffic impacts for a project built per existing zoning would be similar to that per the proposed zoning;
- and that project mitigation should and will, be developed with the Town's input.

DPW Transportation Planner David Friend's review of the H/S-H study is summarized in a memo to the Sub-Committee, Selectmen and Planning Board dated January 27th entitled "Traffic and Parking Implications of Proposed Zoning Amendment - Redevelopment of B2 Parcel". He states that the uncertainties of traffic and parking are more difficult to resolve than other issues at this early stage in the design process and that more detailed studies and the development of

mitigation measures are not necessary at the re-zoning stage - and better left to the design review process required for a Special Permit once a project is actually submitted.

Certainly their remains concern within the community as to whether more *should* have been done, since this warrant article - as had the preceding *two* - came to the Town with all the appearance of a very refined proposal for an actual building, one which could yet be build almost exactly like the one they've seen so far.

Mr. Friend's other important conclusions are:

- a potential Lab use would only generate 75% of the peak hour traffic generated by an office use;
- even the higher population of an Office would not "overwhelm" the immediate area;
- and that the anticipated 70 additional "T" riders will not "overwhelm" the D-line or buses to the site.

His analysis also suggests that there will be opportunities to mitigate the increased vehicle trips by the use of various Transportation Demand Management (TDM) measures including but not limited to:

- subsidized transit passes for employees, ridesharing matching programs, preferential parking for carpool, secure bicycle storage facilities, expanded shuttle bus services (if linked to the MASCO area) and the imposition of market rate parking fees.
- some operational improvements at selected intersections through the coordination and optimization of existing traffic signals or the installation of new signals, and that
- oversight will be required, by the developer, in the future over the ongoing effectiveness of TDM measures and reporting to the Town.

His report summarizes all the additional significant work to be accomplished during the design review process. "During the § 5.09 Design Review process, the developer of 2 Brookline Place will be expected to respond to the questions and informational needs identified by town officials in response to the Phase One Traffic Study. The more detailed assessment of impact will provide the basis for a transportation access and mitigation plan..."

We believe that this is a very complex site with respect to transportation issues. The draft of the Comprehensive Plan noted significant peak and off-peak hour congestion already experienced in the Route 9 corridor and at all its major intersections from Chestnut Hill to the border of Boston. It also points out that "regional traffic is anticipated to continue to grow based on continued employment growth in downtown Boston and the Longwood Medical and Academic area and in the City of Newton." This was also acknowledged in the traffic studies to date, for the future. We would note that approval of these articles would take resolution of these issues away from Town Meeting and into the hands of the Planning Board and the Zoning Board of Appeals - but thereby offer ongoing citizen participation review and comment.

Parking:

The revised warrant article changes our zoning regulations to reduce the amount of parking required for a laboratory use. The current requirement calls for 1 space per 600 square feet of gross floor area and the change would decrease the requirement to 1 space per 1000 square feet. This recognizes an accepted newer standard indicates a lower actual population of workers in a lab build.

In his memo of 1/27, Mr. Friend reviews and summarizes his assessment of the parking issues. He repeats that the goal at the re-zoning stage is to determine if proposed uses and the transportation systems are not "mismatched" causing them to be "overwhelmed"; and that by nature there is uncertainty because a final use and project has not been developed.

He seeks to assure the community that there are and will be, sufficient measures available during the project review processes for the Special Permit, to address anticipated impacts. The studies to date have used scenarios based on the existing and proposed zoning which have modeled the extent of the *peak impact demand* compared with existing conditions and those possible under present zoning limits.

Mr. Friend points out that the number of parking spaces in a building should "ideally... be sufficient to meet peak demand for the use proposed but not be so excessive that large numbers of spaces go unoccupied." Overbuilding of parking can "waste valuable urban land" increasing the cost of development and might even negatively encourage MBTA park-and-riders commuting into Boston. In contrast, providing too little could encourage spillover onto the neighboring streets even where prohibited. He also notes that it is an accepted practice now to assume slightly elevated levels of transit use, thereby allowing for a reduction in required spaces "in hopes of encouraging" "T" ridership, carpooling and bikers.

His final stated conclusion is that "the peak parking demands generated by redevelopment of the B2 parcel can be accommodated on the site."

Mr. Friend's analysis portrays much confidence that a properly conceived and implemented TDM plan will solve issues related to parking, but certainly many citizens have lingering concerns that those solutions may still result in illegal off-site parking in adjoining neighborhoods.

When asked at an earlier public hearing how the Town intended to address this, Mr. Friend advised us that the Town would use the same measures presently employed, i.e. enforcement and possibly the use of resident sticker parking. The Committee notes that these approaches have often proven ineffective at addressing the present problem of overflow business and commuter parking on these streets - and certainly it will remain an issue for diligent enforcement in the future.

The latest amendment offered by Daly and found at the end of this report contains language that would permit denser forms of parking, such as tandem or stacked parking. This arrangement allows more square feet to be used for open space or better design.

Special District Regulations:

There are nine special districts in Brookline. The broader language of the Special District Regulations was modified by the Planning Board amendment. However, there still remains the issue of special districts and how they differ from project based zoning. The broader language of the Special District Regulations was modified by the Planning Board amendment. However, the new definition and procedures for developing special districts includes language that defines project-based initiatives as a means to establish new zoning. Project - based zoning, such as the re-zoning proposals we have before us in this warrant article, is now being called out as one way to establish a Special District in Town.

The new language defining Special District Regulations adds language to the Town's Zoning By-Law Section 5.06 to define the unique physical conditions necessary to establish a Special District anywhere in the Town and sets forth the procedures to do so.

1. **“Purpose”**, explains that unique qualities of land use, environmental consideration, architectural character or other physical conditions may warrant the designation of Special District. The purpose of such districts are to insure orderly planned growth and development, promote historic and natural resource conservation, residential neighborhood preservation and the economic viability of commercial areas. Special Districts are also meant to insure concurrent planning for transportation, infrastructure and related public improvements.
2. **“Establishment”** lists three ways that a Special District may be established. These include:
 - a. A land use study, building study, environmental study, architectural study, design study or other physical feature study
 - b. The Comprehensive Plan or a neighborhood plan or commercial area plan
 - c. "A conceptual or schematic design plan for one or more parcels of land or buildings within a district that will benefit from Special District Regulations."
3. **“Procedures”** outlines standards under Section 5.09.4 and Section 9.05.1 and states that the plans or studies listed in the Establishment subsection must be submitted to the Board of Appeals as supporting documentation. The Planning Board has deleted the sentence in the warrant article requiring that these plans or studies be used as the basis for special permit findings.

The warrant articles included in the Special Town Meeting for this June have been revised from the articles voted down in March in a number of important ways.

Town Meeting will be asked to address three issues. These include:

- 1) Defining special districts to allow the town to use this tool to promote special projects on specific parcels or in specific neighborhoods or districts
- 2) Creating a newly named zoning district that will apply Special District Regulations to only one parcel because of limits in square footage of parcel size. Bio – Safety Level 1 or 2 laboratories will be allowed in this one geographic location because of the district name change and lot size constraints.
- 3) Determining whether Winn Development Corporation's "economic envelope" and design program for the B-2 parcel, which requires a substantial increase in height and massing over our current zoning with public benefits for this site, is in the best interest of Brookline Village and the Town.

The new language before Town Meeting allows that a specific design plan for one or more land parcels can be used to change zoning to allow such a project.

This definition of project-based zoning does not specify the origin of a design plan and allows for the possibility of a developer's plan to shape future zoning through the special district and special permitting process.

Town Meeting will need to consider the potential impact of these newly defined and established procedures. The lack of independence in differentiating the planning and environmental impact assessment process from the development process is a serious concern.

Additionally, the potential of creating unique zoning opportunities on isolated land parcels appears to merely skirt state prohibitions against "spot – zoning". Even if the language the Town has developed has been through a preliminary review by the Attorney General there is concern that the spirit of the law may be compromised.

The Planning and Regulation Sub-Committee fully supports the Planning Department's and Planning Board's goals of protecting and promoting our valued mix of land-uses and the need for maintaining the economic vitality and viability of our commercial areas. Yet we would hope to see Special Districts be used stringently and only after a clear and independent analysis of the potential environmental consequences of large-scale development has been presented.

None of the proposed zoning amendments address our relatively benign, parochial Community and Environmental Impact and Design Standards. If we are considering re-zoning proposals to allow larger and more massive building projects with new and potentially hazardous uses we should concurrently be developing more stringent environmental thresholds and review standards.

Activity and Use Limitation (AUL):

Information came to light through the Freedom of Information Act that an “Activity and Use Limitation” exists on the B2 Parcel. An Activity and Use Limitation is a legal restriction of use due to contamination in the soils on a site and this limitation of use is attached to the property deed. AULs are common in an urban environment and do not prevent construction, but require special attention during construction. There are many sites throughout Brookline with AULs, including the condominiums at the former Kendall Town garage.

Nancy Kaplan, a lawyer retained by the Town specializing in environmental issues has written a memo to Town Counsel about the AUL at 2 Brookline Place. “The AUL does not prohibit the contemplated proposed building on the property. However, it does list the removal of the building foundation and excavation below it as activities and uses that are inconsistent with the AUL....If the project moves forward, the developer will amend the AUL to reflect the new use to ensure that a condition of “No Significant Risk” is maintained during construction and for the proposed future use.”

The B-2 parcel had several leaking underground storage tanks (LUST) reported to the Department of Environmental Protection in 1985 and had been removed with the contaminated soil. These tanks contained all petroleum based products (oil, gasoline, waste oil). The Department then placed the property on a list called Locations To Be Investigated (LTBI). Nothing was done to the site until 1997 when the developer hired a Licensed Site Professional (LSP) to conduct a Comprehensive Site Assessment and close out the site with the Department of Environmental Protection. Analyses of soil borings showed that the contamination under the building located at the B-2 parcel was at very low levels when compared to the standards currently published in the Massachusetts Contingency Plan (310 CMR 40.0000). This site was closed out with an Activity and Use Limitation by a Licensed Site Professional in 1997, after the site was shown to pose no significant risk to human health or the environment using a Method 3 Risk Assessment. After a site is “closed out”, there is no further involvement by the Department of Environmental Protection, although all sites closed with an AUL are audited by the Department. AULs can be imposed only on contaminated soils, not groundwater.

The MCP was modified in 1999, requiring higher levels of contaminants for instituting an AUL on a property. As a result, this site no longer requires an AUL. The LSP and the developer may now remove the AUL.

Disposal of Contaminated Soils and Groundwater: Because the level of soil contamination is so low, the petroleum-contaminated soil may be removed to an unlined landfill at a reduced cost per ton. Other soils that are commonly found in urban areas containing contaminants but considered background by the Department may have to be transported to a recycling plant at a higher cost. In any event, the underground parking garage and construction footings for the building will require the removal of substantial quantities of soil, including most of the

contaminated soil. This will leave the site much cleaner after construction than it is currently.

In the event the groundwater is still contaminated, it must be treated and cleaned to drinking water standards before it is discharged to the municipal storm drain. Obtaining an EPA discharge permit does this. The discharge water would flow to Pearl Street and then to the Muddy River. The developer would have to test the water prior to discharging to insure that the discharged water meets EPA standards.

In summary, the development will result in a general cleanup of the site with little or no risk during construction to people or to the environment. In addition, a proposed amendment to Article 14 will insure that all issues regarding contamination will be the financial responsibility of the developer.

It should be pointed out that the Town was certainly aware of the AUL, since the Town owned the property and itself filed a Notice of Activity and Use Limitation with the Norfolk County Registry of Deeds in 1997. During public comment on this topic, it was mentioned that the developer was not forthcoming with contamination information. However, the developer had included the cost of the removal and disposal of contaminated soils and groundwater in the financial analysis, and the Town certainly was aware of the AUL. Apparently, since an AUL is not uncommon in urban redevelopment, and do not preclude construction, it was probably not considered as important as other issues, such as FAR, height, land use, and traffic.

RECOMMENDATION:

At the last two Town Meetings, Town Meeting members have heard many passionate arguments both for and against the articles pertaining to the development of the B-2 parcel. This may be the last time that these zoning articles will come before Town Meeting. If these articles do not pass, Winn Development may sign a long term lease for their vacant property at the B-2 parcel and make it impossible to consider any significant change to this property for years to come.

Summary of key points

- If passed, this warrant article would change the zoning at the Village Square Zoning District, Brookline Place B2 parcel, to allow for a maximum height of 115 feet (10 feet or 1 floor lower than earlier proposals), an FAR (floor area ratio) of 4.0, with a requirement of 25% of the lot area devoted to open space. A special permit must be obtained and the design process of the Zoning Board of Appeals would be followed in order to build to this density. A research laboratory could be built on this site, but only for Level 1 or 2 biological research (no dangerous organisms that could be transmitted through air).

- The Town's Assessor is estimating that a office building with an FAR of 4.0 could be expected to result in an annual net increase in taxes of approximately \$862,000; while a building of the same FAR used for laboratory research could be expected to result in an annual net increase in taxes of approximately \$1,190,000.
- Several knowledgeable reviewers of the numbers and assumptions used in real estate development in general, and of those used by this developer in particular, have concluded that the developer does need an FAR of 4.0 in order to have a financially viable project.
- Our Director of Public Health and Acting Chief of the Fire Department believe that a biolab that is only Level 1 or Level 2 can be safely managed in Brookline with little or no danger to the public. Our firefighters are trained to deal with any problems that might arise in that level lab. If this site was used as a biolab, the tenant at the site would have to pay the costs of health and safety oversight by the Town.

This site did have some contamination in the soil from prior use involving oil storage and auto repair. Winn Development cleaned this contamination out as necessary during prior building. However, the site did have an Activity and Use Limitation stating that it could not be used for residential purposes without further removal of contaminants, supervised by a licensed site professional. The State has since revised the regulations and this site could probably be used for residential purposes even without further removal. However, in the course of constructing the foundation for a 115 foot building, particularly with the inclusion of underground parking, any remaining contaminated soil would be removed and the soil and ground water should end up being cleaner than prior to development.

Reasons to approve

Simply stated, there are two primary reasons to approve this project. One is we have a top notch developer and two, the Town needs the additional tax revenue that this project will generate in future years.

As developments of the size proposed in the B-2 parcel are considered, the Town is faced with many uncertainties. The one thing that is not uncertain is that the owner of this property has a top-notch reputation and is viewed in the Boston metropolitan area to be one of the highest integrity. This is one of the most persuasive reasons to feel positive about this development. A majority of the members of the subcommittee are confident that we will get what we are promised, should Town Meeting approve the zoning articles in the June Town Meeting.

In many aspects, the proposed project is consistent with recommendations of the Draft Comprehensive Plan:

encourage new commercial development with zoning changes;

support a mix of businesses, including retail;
attract customers to the Brookline Village area;
increase revenues to the Town; create a visual gateway;
allow increased building height.

It is no secret that the budget projections for Brookline show a demonstrated need to shore up the tax revenue stream. New growth and overrides are the two mechanisms that can address this need. An override is considered by most to be the less desirable of these two alternatives. Unlike residential development, the proposed development of the B-2 parcel will come with little demand for increased town services.

Concerns

Significant concerns have been raised about proceeding with this development. Many voice safety concerns (possible contamination or possible accidents from lab use.) Others are concerned about increased traffic or shadows generated by a building of this proposed size. However, the thoughtful concerns elaborated by the immediate neighbors are the most difficult to address. Protecting neighborhoods against undesirable impacts and promoting a cohesive vision for future development are difficult to reconcile with the desire to build a large lab/office building and with the possible added revenue it would generate. Many have argued that the neighborhood is negatively impacted and that the good to the community as a whole comes at a price borne by the neighborhood. This argument is not one unique to Brookline Village. In many other recent proposed developments considered by Town Meeting, there was significant neighborhood opposition to projects as varied as the Webster Street hotel, St. Aidens, and the Carlton Street footbridge. It seems to be difficult, if not impossible, to get enthusiastic support from both the immediate neighbors and abutters and the wider community in Brookline. This adversarial pattern between neighbors and those residents that live a distance away from a proposed project is troubling and is not easy to reconcile.

A second concern is whether the Town Boards and Departments are capable to handle the challenges of a project as large as the one that is being proposed. It is essential that Town Boards and Departments handle projects such as this with the sophistication and sensitivity necessary to hear and address neighborhood concerns and to protect the Town's interests. It is also essential that our confidence in these bodies be maintained and, for some, restored. Even if necessary conditions are imposed for granting a Special Permit, these will be meaningless if mechanisms are not put in place to ensure that these requirements are enforced to the letter. Even under ideal conditions, with relevant enforcement, there will be some adverse impacts to the surrounding neighborhoods. Should these warrant articles be approved by Town Meeting, all interested citizens are encouraged to observe and participate in the design review process.

Some feel that the biggest impact beyond the immediate abutters will be traffic. There was discomfort with the Town's claim that we didn't need to figure out the traffic impact and

mitigation in detail at this point in the process but that the project would not overwhelm the surrounding area. There has been discomfort with the Town's ability to mitigate the traffic across the Town, and we should recognize that traffic pressures on the proposed development area are going to increase irrespective of what we do at 2BP, considering the development given in Boston and Newton. At least with this project, we will have traffic engineers paid for by the project taking a look at the situation and we will have project resources available to improve the Route 9/Brookline Ave intersection.

For some, the responsiveness of the Design Review Process after the zoning change is a key concern. A "normal" design review team is drawn from a list of willing professionals maintained by the Planning Department. The town then assumes a reactive posture with respect to a project. However, for the 2BP Design review process, Town Meeting was assured that this would not a "normal" design review team made up only of professionals drawn from a list but would also include neighborhood folks to insure that the concerns of the abutters and the "surrounding neighborhood" would be considered. Also, in March 2004 the Selectmen, EDAB and the Economic Development office put their personal prestige on the line to make sure this would take place. For this Town Meeting, the commitment of the Town and its offices has not been visible. That may give some in Town Meeting pause.

Trust is a key element for any change. Trust, active involvement from the neighbors, and support from the Town are essential in order for us to overcome the inherent uncertainty of such a significant project.

The Advisory Committee voted 14 in favor and 1 opposed for FAVORABLE ACTION on Article 1 as amended in the following **MAIN MOTION UNDER ARTICLE 1 OF THE SPECIAL TOWN MEETING:**

VOTED: That the Town amend the Zoning By-law as follows:

- I. With respect to ARTICLE V DIMENSIONAL REQUIREMENTS, SEC. 5.06 – SPECIAL DISTRICT REGULATIONS, insert new subsections: 1. Purpose, 2. Establishment, 3. Procedures, and 4. Special Districts, with existing 1 through 3 converting to a., b. and c. under 4. Special Districts.

SECTION 5.06 – SPECIAL DISTRICT REGULATIONS

1. Purpose

The following Special District Regulations recognize that unique land use, environmental, architectural and other physical conditions present within the Town may require detailed neighborhood, district or site planning and design review to insure: orderly and planned growth and development; historic and natural resource conservation; residential neighborhood preservation; economic viability of commercial areas; and concurrent planning for transportation, infrastructure and related public improvements. To insure that the dimensional

and related requirements of the Zoning By-Law address these unique conditions, Town Meeting, from time to time, in accordance with MGL Chapter 40 A, may establish Special District Regulations and the Board of Appeals may consider applications for Special Permits based on those regulations.

1. Establishment

The establishment of Special District Regulations shall be based on one or more of the following:

- a. A study of land use, building, environmental, economic, architectural, design or other physical features of an area or district that defines the conditions and purposes supporting the establishment of Special District Regulations and the geographic area that will be subject to the regulations.
- b. The Comprehensive Plan, neighborhood or commercial area plan that defines an area where Special District Regulations should be applied.
- c. A conceptual or schematic design plan for one or more parcels of land or buildings within a district that will benefit from Special District Regulations

3. Procedures

Applicants for Special Permits, subject to Special District Regulations, shall submit to the Board of Appeals the supporting studies and plans defined by Section 5.06.2.

4. Special Districts [insert present sections 5.06 1-3 as subsections a, b and c]

II. With respect to a ZONING MAP CHANGE

1. Change the G-2.0 (VS) zoning district on the zoning map to GMR-2.0.

III. With respect to ARTICLE III, ESTABLISHMENT OF ZONING DISTRICTS, SECTION 3.01 – CLASSIFICATION OF DISTRICTS

1. Change 2. c. to read General Business (G) and General Business and Medical Research (GMR)
2. Replace 2.c.7 to read GMR -2.0 (Refer to Sec. 5.06, Special District Regulations)

IV. With respect to ARTICLE V. DIMENSIONAL REQUIREMENTS, SECTION 5.01

TABLE OF DIMENSIONAL REQUIREMENTS, add a new line in the Table after G-2.0 for the new district GMR- 2.0 as follows:

SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS							PBI ¹¹		MINIMUM YARD ³ (feet)			OPEN SPACE (% of gross floor area)	
DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	PBI ¹¹ NB ONLY	LOT WIDTH MINIMUM (feet)	HEIGHT ⁹ MAXIMUM	B	NB	Front ^{1,6}	Side ²	Rear	Landsc.	Useable ¹³
GMR- 2.0	Any Structure or principal use (dwelling-footnote 5)	none ⁴	2.0	2.5	none ⁴	45	60	100	none	none ⁷	$10 + \frac{L^8}{10}$	none	none ⁵
			4.0 ¹⁷	N/A		115 ¹⁷	N/A	N/A					

Insert the following new footnote 17 after the Floor Area Ratio Maximum and Height Maximum permitted within the GMR-2.0 District, as shown in the above revised Section 5.01, TABLE OF DIMENSIONAL REGULATIONS and in the footnote section below the table.

17. See SECTION 5.06 – SPECIAL DISTRICT REGULATIONS, d. General Business and Medical Research (GMR)

V. Delete 100 (VS) from the PBI (Public Benefit Incentive) column for the G-2.0 row of Section 5.01 Table of Dimensional Requirements.

The proposed G-2.0 District row will read as follows:

SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS							PBI ¹¹		MINIMUM YARD ³ (feet)			OPEN SPACE (% of gross floor area)	
DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	PBI ¹¹ NB ONLY	LOT WIDTH MINIMUM (feet)	HEIGHT ⁹ MAXIMUM	B	NB	Front ^{1,6}	Side ²	Rear	Landsc.	Useable ¹³
G-2.0	Any Structure or principal use (dwelling-footnote 5)	none ⁴	2.0	2.5	none ⁴	45	60 45(CA)	70 55(CA)	none	none ⁷	$10 + \frac{L^8}{10}$	none	none ⁵

VI. With respect to ARTICLE V - DIMENSIONAL REQUIREMENTS, SECTION 5.06, SPECIAL DISTRICT REGULATIONS add a new paragraph d. under Special Districts, to read as follows:

d. General Business and Medical Research (GMR)

1) All applications for new structures, outdoor uses, and exterior alterations or additions in the GMR-2.0 District which exceed a floor area ratio of 2.5 or a height of 100 feet shall be permitted only on a lot no less than 50,000 square feet and no greater than 65,000 square feet in area and shall be subject to the requirements of § 5.09, Design Review, obtain a special permit per § 9.03, and meet the following requirements.

- a) The maximum height shall not exceed 115 feet and the maximum gross floor area ratio shall not exceed 4.0.
 - b) no less than 25% of the Lot Area shall be devoted to landscaped and useable open space.
 - c) no less than 60% of the parking spaces required by the Board of Appeals shall be provided completely below grade.
 - d) no less than 25% of the provided parking spaces shall be offered to residents for overnight parking.
 - e) no less than 1% of the hard construction costs of constructing a building on a Lot (exclusive of tenant fit-up) shall be devoted to making off-site streetscape improvements (such as, but not limited to, lighting, street furniture and widening sidewalks) and undertaking transportation mitigation measures. A plan of the proposed off-site streetscape improvements and a description of the proposed transportation mitigation measures shall be submitted for the review and approval of the Planning Board or its designee.
- 2) The parking requirements for applications in the GMR-2.0 District in light of the proximity to rapid public transit shall be as follows:
- a) retail use: one parking space per 350 g.s.f. of floor area
 - b) office use: one parking space per 600 g.s.f. of floor area
 - c) research laboratory use (Use 36B): one parking space per 1,000 g.s.f.
 - d) The number of parking spaces for the above uses in a GMR-2.0 District may be reduced by special permit, however, by no more than 15%, where it can be demonstrated to the Board of Appeals that it is warranted due to provisions in a Transportation Access Plan that includes recognized Transit Demand Management programs. A Transportation Access Plan Agreement shall be a condition of the special permit, shall be submitted for review to the Director of Transportation and the Director of Planning and Community Development, and shall require an annual report to the Director of Transportation. This annual report shall be accepted only after a determination by the Director of Transportation and the Director of Planning and Community Development that the Transportation Access Plan is working satisfactorily, and if not, that the plan will be changed and implemented to their satisfaction.

The Board of Appeals may also approve parking facilities that employ a tandem parking arrangement and/or mechanical devices that enable vehicles to be stacked

vertically inside a garage subject to a report and recommendation from the Town’s Director of Engineering and Transportation.

- 3) A special permit granted under this section shall lapse within 2 years if a building permit is not issued and construction has not begun by such date except for good cause.

VII. With respect to ARTICLE IV, USE REGULATIONS, SECTION 4.07 – TABLE OF USE REGULATIONS:

Add a Principal Use 36B in SECTION 4.07 – TABLE OF USE REGULATIONS with the following:

Principal Uses	Residence				Business			Industry
	S	SC	T	M	L	G	O	I
<p>36B. Research laboratory for scientific or medical research, with a Bio safety Level of Level 1 or Level 2 as defined by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, and National Institutes of Health, provided the use is located on a lot with no less than 50,000 square feet and no more than 65,000 square feet in area and is operated in compliance with all town, state and federal health and safety regulations, and that thirty days prior to a Board of Appeals hearing on the use, and annually, a report detailing hazardous materials operations, processes, disposal and storage shall be reviewed and approved in writing by an independent recognized expert, the Fire Chief and Director of Public Health and Human Services.</p> <p>* Permitted by Special Permit only in a GMR-2.0 District</p>	No	No	No	No	No	SP*	No	No

VIII. With respect to ARTICLE V, DIMENSIONAL REQUIREMENTS, SECTION 5.21 –
MAXIMUM FLOOR AREA REGULATIONS (PUBLIC BENEFIT
INCENTIVES):

Insert “,GMR-2.0” in Table 5.02 after “G-2.0” in the heading of the third
column.

IX. With respect to ARTICLE V, DIMENSIONAL REQUIREMENTS, SECTION 5.32 –
EXCEPTIONS TO MAXIMUM HEIGHT REGULATIONS (PUBLIC BENEFIT
INCENTIVES):

Insert “,GMR-2.0” in paragraph 1 after “G-2.0”.

**RED-LINED VERSION OF VOTE TO SHOW CHANGES TO EXISTING
ZONING BY-LAW**

[] = New language
√ = Deleted Language

Deleted: xxxx

To see if the Town will amend the Zoning By-law as follows:

- I. With respect to ARTICLE V. DIMENSIONAL REQUIREMENTS, SEC. 5.06 – SPECIAL DISTRICT REGULATIONS, insert new subsections: 1. Purpose, 2. Establishment, 3. Procedures, and 4. Special Districts, with existing 1 through 3 converting to a., b. and c. under 4. Special Districts.

SECTION 5.06 – SPECIAL DISTRICT REGULATIONS

[1. Purpose

The following Special District Regulations recognize that unique land use, environmental, architectural and other physical conditions present within the Town may require detailed neighborhood, district or site planning and design review to insure: orderly and planned growth and development; historic and natural resource conservation; residential neighborhood preservation; economic viability of commercial areas; and concurrent planning for transportation, infrastructure and related public improvements. To insure that the dimensional and related requirements of the Zoning By-Law address these unique conditions, Town Meeting, from time to time, in accordance with MGL Chapter 40 A, may establish Special District Regulations and the Board of Appeals may consider applications for Special Permits based on those regulations.

2. Establishment

The establishment of Special District Regulations shall be based on one or more of the following:

- a. A study of land use, building, environmental, economic, architectural, design or other physical features of an area or district that defines the conditions and purposes supporting the establishment of Special District Regulations and the geographic area that will be subject to the regulations.
- b. The Comprehensive Plan, neighborhood or commercial area plan that defines an area where Special District Regulations should be applied.
- c. A conceptual or schematic design plan for one or more parcels of land or buildings within a district that will benefit from Special District Regulations

3. Procedures

Applicants for Special Permits, subject to Special District Regulations, shall submit to the Board of Appeals the supporting studies and plans defined by Section 5.06.2.

4. Special Districts]

Insert present sections 5.06 1-3 as subsections a, b and c as indicated below:

~~1.~~ a. Multiple or Attached Dwelling Development in S-0.75P District

~~2.~~ b. Coolidge Corner General Business District G-1.75(CC)

~~3.~~ c. Multiple or Attached Dwelling Development in S-0.5P District

II. With respect to a ZONING MAP CHANGE

1. Change the G-2.0 (VS) zoning district on the zoning map to GMR-2.0. (See Attached Map)

III. With respect to ARTICLE III, ESTABLISHMENT OF ZONING DISTRICTS, SECTION 3.01 – CLASSIFICATION OF DISTRICTS

1. Change 2. c. to read:

c. General Business (G) [and General Business and Medical Research (GMR)]

2. Replace 2.c.7) to read:

GMR -2.0 (Refer to Sec. 5.06, Special District Regulations)

7) ~~G-2.0 (VS) Village Square~~ [GMR-2.0 (Refer to Sec. 5.06, Special District Regulations)]

IV. With respect to ARTICLE V. DIMENSIONAL REQUIREMENTS, SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS, [add a new line in the Table after G-2.0 for the new district GMR- 2.0 as follows:

SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS							PBI ¹¹		MINIMUM YARD ³ (feet)			OPEN SPACE (% of gross floor area)	
DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	PBI ¹¹ NB ONLY	LOT WIDTH MINIMUM (feet)	HEIGHT ⁹ MAXIMUM	B	NB	Front ^{1,b}	Side ²	Rear	Landsc.	Useable ^{1,2}
GMR- 2.0	Any Structure or principal use (dwelling-footnote 5)	none ⁴	2.0	2.5	none ⁴	45	60	100	none	none ⁷	10 + $\frac{L^8}{10}$	none	none ⁵
			4.0 ¹⁷	N/A		115 ¹⁷	N/A	N/A					

Insert the following new footnote 17 after the Floor Area Ratio Maximum and Height Maximum permitted within the GMR-2.0 District, as shown in the above revised Section 5.01, TABLE OF DIMENSIONAL REGULATIONS and in the footnote section below the table.

[17. See SECTION 5.06 – SPECIAL DISTRICT REGULATIONS, d.
General Business and Medical Research (GMR)]



- V. Delete 100 (VS) from the PBI (Public Benefit Incentive) column for the G-2.0 row of Section 5.01 Table of Dimensional Requirements.

The proposed G-2.0 District row will read as follows:

SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS							PBI ¹¹		MINIMUM YARD ³ (feet)			OPEN SPACE (% of gross floor area)	
DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	PBI ¹¹ NB ONLY	LOT WIDTH MINIMUM (feet)	HEIGHT ⁹ MAXIMUM	B	NB	Front ^{1,6}	Side 2	Rear	Landsc.	Useable ^{1,2}
G-2.0	Any Structure or principal use (dwelling-footnote 5)	none ⁴	2.0	2.5	none ⁴	45	60 45(CA)	70 55(CA) 100(VS)	none	none ⁷	10 + $\frac{L^8}{10}$	none	none ⁵

- VI. With respect to ARTICLE V - DIMENSIONAL REQUIREMENTS, SECTION 5.06, SPECIAL DISTRICT REGULATIONS add a new paragraph d. under Special Districts, to read as follows:

[d. General Business and Medical Research (GMR)]

- 1) All applications for new structures, outdoor uses, and exterior alterations or additions in the GMR-2.0 District which exceed a floor area ratio of 2.5 or a height of 100 feet shall be permitted only on a lot no less than 50,000 square feet and no greater than 65,000 square feet in area and shall be subject to the requirements of § 5.09, Design Review, obtain a special permit per § 9.03, and meet the following requirements.
 - a) The maximum height shall not exceed 115 feet and the maximum gross floor area ratio shall not exceed 4.0.
 - b) no less than 25% of the Lot Area shall be devoted to landscaped and usable open space
 - c) no less than 60% of the parking spaces required by the Board of Appeals shall be provided completely below grade.
 - d) no less than 25% of the provided parking spaces shall be offered to residents for overnight parking.
 - e) no less than 1% of the hard construction costs of constructing a building on a Lot (exclusive of tenant fit-up) shall be devoted to making off-site streetscape improvements (such as, but not limited to, lighting, street furniture and widening sidewalks) and undertaking transportation mitigation measures. A plan of the proposed off-site streetscape

improvements and a description of the proposed transportation mitigation measures shall be submitted for the review and approval of the Planning Board or its designee.

- 2) The parking requirements for applications in the GMR-2.0 District in light of the proximity to rapid public transit shall be as follows:
 - a) retail use: one parking space per 350 g.s.f. of floor area
 - b) office use: one parking space per 600 g.s.f. of floor area
 - c) research laboratory use (Use 36B): one parking space per 1,000 g.s.f.
 - d) The number of parking spaces for the above uses in a GMR-2.0 District may be reduced by special permit, however, by no more than 15%, where it can be demonstrated to the Board of Appeals that it is warranted due to provisions in a Transportation Access Plan that includes recognized Transit Demand Management programs. A Transportation Access Plan Agreement shall be a condition of the special permit, shall be submitted for review to the Director of Transportation and the Director of Planning and Community Development, and shall require an annual report to the Director of Transportation. This annual report shall be accepted only after a determination by the Director of Transportation and the Director of Planning and Community Development that the Transportation Access Plan is working satisfactorily, and if not, that the plan will be changed and implemented to their satisfaction.

The Board of Appeals may also approve parking facilities that employ tandem parking arrangement and/or mechanical devices that enable vehicles to be stacked vertically inside a garage subject to a report and recommendation from the Town's Director of Engineering and Transportation.

- 3) A special permit granted under this section shall lapse within 2 years if a building permit is not issued and construction has not begun by such date except for good cause.]

VII. With respect to ARTICLE IV, USE REGULATIONS, SECTION 4.07 – TABLE OF USE REGULATIONS:

[Add a Principal Use 36B in SECTION 4.07 – TABLE OF USE REGULATIONS with the following:

Principal Uses	Residence				Business			Industry
	S	SC	T	M	L	G	O	I
<p>36B. Research laboratory for scientific or medical research, with a Biosafety Level of Level 1 or Level 2 as defined by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, and National Institutes of Health, provided the use is located on a lot with no less than 50,000 square feet and no more than 65,000 square feet in area and is operated in compliance with all town, state and federal health and safety regulations, and that thirty days prior to a Board of Appeals hearing on the use, and annually, a report detailing hazardous materials operations, processes, disposal and storage shall be reviewed and approved in writing by an independent, recognized expert, the Fire Chief and Director of Public Health and Human Services.</p> <p>* Permitted by Special Permit only in a GMR-2.0 District</p>	No	No	No	No	No	SP*	No	No

VIII. With respect to ARTICLE V, DIMENSIONAL REQUIREMENTS, SECTION 5.21 – MAXIMUM FLOOR AREA REGULATIONS (PUBLIC BENEFIT INCENTIVES):

Insert “,GMR-2.0” in Table 5.02 after “G-2.0” in the heading of the third column as follows:

Table 5.02 – Table of Maximum Gross Floor Increase

Each Condition	M-2.5 Districts	M-1.5, M-2.0, G-1.75(CC), G-2.0, [GMR-2.0] & O-2.0(CH) Districts
Large Lot	30%	20%
Low or Moderate Income	30%	20%
Extra Open Space on Lot	20%	15%
Large Apartments	15%	10%

IX. With respect to ARTICLE V, DIMENSIONAL REQUIREMENTS, SECTION 5.32 – EXCEPTIONS TO MAXIMUM HEIGHT REGULATIONS (PUBLIC BENEFIT INCENTIVES):

Insert “,GMR-2.0” in paragraph 1 after “G-2.0” as follows:

1. Special Permit Required

The Board of Appeals may allow by special permit a maximum height greater than is permitted in **Table 5.01** in M-1.5, M-2.0, M-2.5, G-1.75(CC), G2.0, GMR-2.0 and O-2.0(CH) Districts, provided the maximum height allowed does not exceed the maximum heights specified in the Public benefit Incentives column of **Table 5.01**, and provided that all of the conditions of paragraph 2. of this Section are satisfied.

**PROPOSED AMENDMENT TO ARTICLE 1 OF
THE SPECIAL TOWN MEETING**

Submitted by John Basset, Town Meeting Member, Precinct 6

EXPLANATION:

The intent of this amendment is to offer Town Meeting the compromise position of the Brookline Village Coalition as agreed at our meeting April 21. We propose an increase in maximum FAR from 2.5 to 3.3. 3.3 is the highest now in Brookline. It was recently done just and only for the new hotel in Coolidge Corner. We intend to keep the maximum height at 100 feet, already the highest allowed in town. We believe that 100 feet is high enough in relation to 10 Brookline Place and 1 Brookline Place and that a well designed building at FAR 3.3 could look good and allow adequate open space on the site. We do not want research lab use here. If it's not good for the rest of Brookline, it's not good for us. We do not amend the proposed parking reduction and very much hope it may work as promised.

We understand that there may be interest in creating more Special Districts and that better language will help define acceptable reasons, documentation, and procedures. We are very concerned to avoid language that could codify and legitimize project based zoning. We think also that it is premature and unwarranted to allow the Comprehensive Plan as justification for a Special District. While the Comprehensive plan contains useful and interesting ideas and is the product of considerable work, it is not policy. It will doubtless be used as a reference by those who agree with its recommendations. But it has not been voted on by Town Meeting and does not formally represent the will of the town.

We offer this amendment with the hope that there will be a substantial redevelopment at 2 Brookline Place. We have been part of the year long public discussion and believe that our proposal allows redevelopment that will be profitable for the owner, increase tax revenue for the Town, consistent with the scale of adjacent buildings, and benefit Brookline Village.

Proposed Amendments in **Bold** and Underlined
Proposed Deletions in **Bold** and []

Voted that the Town amend the Zoning By-law as follows:

- I. With respect to ARTICLE V DIMENSIONAL REQUIREMENTS, SEC. 5.06 – SPECIAL DISTRICT REGULATIONS, insert new subsections: 1. Purpose, 2. Establishment, 3. Procedures, and 4. Special Districts, with existing 1 through 3 converting to a., b. and c. under 4. Special Districts.

SECTION 5.06 – SPECIAL DISTRICT REGULATIONS

1. Purpose

The following Special District Regulations recognize that unique land use, environmental, architectural and other physical conditions present within the Town may require detailed neighborhood, district or site planning and design review to insure: orderly and planned growth and development; historic and natural resource conservation; residential neighborhood preservation; economic viability of commercial areas; and concurrent planning for transportation, infrastructure and related public improvements. To insure that the dimensional and related requirements of the Zoning By-Law address these unique conditions, Town Meeting, from time to time, in accordance with MGL Chapter 40 A, may establish Special District Regulations and the Board of Appeals may consider applications for Special Permits based on those regulations.

2. Establishment

The establishment of Special District Regulations shall be based on one or more of the following:

a. A study of land use, building, environmental, economic, architectural, design or other physical features of an area or district that defines the conditions and purposes supporting the establishment of Special District Regulations and the geographic area that will be subject to the regulations.

[b. The Comprehensive Plan, neighborhood or commercial area plan that defines an area where Special District Regulations should be applied.

c. A conceptual or schematic design plan for one or more parcels of land or buildings within a district that will benefit from Special District Regulations.]

3. Procedures

Applicants for Special Permits, subject to Special District Regulations, shall submit to the Board of Appeals the supporting studies and plans defined by Section 5.06.2. . **[These plans or studies, which serve as the underlying basis for establishing Special District Regulations, will also serve as the basis for the Special Permit findings of the Board of Appeals, along with the standards under Section 5.09.4. Community and Environmental Impact and Design Standards and Section 9.05.1. Conditions for Approval of Special Permit.]**

4. Special Districts [insert present sections 5.06 1-3 as subsections a, b and c]

[II. With respect to a ZONING MAP CHANGE

1. Change the G-2.0 (VS) zoning district on the zoning map to GMR-2.0.]

[III. With respect to ARTICLE III, ESTABLISHMENT OF ZONING DISTRICTS, SECTION 3.01 – CLASSIFICATION OF DISTRICTS

1. Change 2. c. to read General Business (G) and General Business and Medical Research (GMR)

2. Replace 2.c.7 to read GMR -2.0 (Refer to Sec. 5.06, Special District Regulations)]

[IV. With respect to ARTICLE V. DIMENSIONAL REQUIREMENTS, SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS, add a new line in the Table after G-2.0 for the new district GMR- 2.0 as follows:

SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS							PBI ¹¹		MINIMUM YARD ³ (feet)			OPEN SPACE (% of gross floor area)	
DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	PBI ¹¹ NB ONLY	LOT WIDTH MINIMUM (feet)	HEIGHT ⁹ MAXIMUM	B	NB	Front ^{1,6}	Side 2	Rear	Landsc.	Useable ¹³
GMR- 2.0	Any Structure or principal use (dwelling-footnote 5)	none ⁴	2.0	2.5	none ⁴	45	60	100	none	none ⁷	$10 + \frac{L^2}{10}$	none	none ⁵
			4.0 ¹⁷	N/A		125 ¹⁷	N/A	N/A					

Insert the following new footnote 17 after the Floor Area Ratio Maximum and Height Maximum permitted within the GMR-2.0 District, as shown in the above revised Section 5.01, TABLE OF DIMENSIONAL REGULATIONS and in the footnote section below the table.

17. See SECTION 5.06 – SPECIAL DISTRICT REGULATIONS, 4. General Business and Medical Research (GMR)]

Revise Section 5.01 Table of Dimensional Requirements by replacing the existing floor area ratio maximum of 2.5 within the PBI (Public Benefit Incentive) column for the G-2.0 row with a new floor area ratio maximum of 3.3 for the G-2.0 (VS) District.

The proposed G-2.0 district row will read as follows:

SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS							PBI ¹¹		MINIMUM YARD ³ (feet)			OPEN SPACE (% of gross floor area)	
DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	PBI ¹¹ NB ONLY	LOT WIDT H MINIM UM (feet)	HEIGHT ⁹ MAXIMUM	B	NB	Front ^{1,6}	Side 2	Rear	Landsc.	Useable ¹³
G-2.0	Any Structure or principal use (dwelling-footnote 5)	none ⁴	2.0	2.5 3.3 (VS)	none ⁴	45	60 45(CA)	70 55(CA) 100(VS)	none	none ⁷	$10 + \frac{L^2}{10}$	none	none ⁵

V. With respect to ARTICLE V - DIMENSIONAL REQUIREMENTS, SECTION 5.06, SPECIAL DISTRICT REGULATIONS add a new paragraph d. under Special Districts, to read as follows:

d. **Village Square** General Business **District G-2.0(VS)** **[and Medical Research (GMR)]**

- 1) All applications for new structures, outdoor uses, and exterior alterations or additions in the **[GMR-2.0] G-2.0 (VS)** District which exceed a floor area ratio of 2.5 **[or a height of 100 feet shall be permitted only on a lot no less than 50,000 square feet and no greater than 65,000 square feet in area and]** shall be subject to the requirements of § 5.09, Design Review, obtain a special permit per § 9.03, and meet the following requirements.
 - a) The **[maximum height shall not exceed 125 feet and the]** maximum floor area ratio shall not exceed **[4.0] 3.3**.
 - b) no less than 25% of the Lot Area shall be devoted to landscaped open space.
 - c) no less than 60% of the parking spaces required by the Board of Appeals shall be provided completely below grade.
 - d) no less than 25% of the provided parking spaces shall be offered to residents for overnight parking.
 - e) no less than 1% of the hard construction costs of constructing a building on a Lot (exclusive of tenant fit-up) shall be devoted to making off-site streetscape improvements (such as, but not limited to, lighting, street furniture and widening sidewalks) and undertaking transportation mitigation measures. A plan of the proposed off-site streetscape improvements and a description of the proposed transportation mitigation measures shall be submitted for the review and approval of the Planning Board or its designee.
- 2) The parking requirements for applications in the **[GMR-2.0] G-2.0(VS)** District in light of the proximity to rapid public transit shall be as follows:
 - a) retail use: one parking space per 350 g.s.f. of floor area
 - b) office use: one parking space per 600 g.s.f. of floor area
 - c) research laboratory use (Use 36**[B]****A**): one parking space per 1,000 g.s.f.
 - d) The number of parking spaces for the above uses in a **[GMR-2.0] G-2.0(VS)** District may be reduced by special permit, however, by no more than 15%, where it can be demonstrated to the Board of Appeals that it is

warranted due to provisions in a Transportation Access Plan that includes recognized Transit Demand Management programs. A Transportation Access Plan Agreement shall be a condition of the special permit, shall be submitted for review to the Director of Transportation and the Director of Planning and Community Development, and shall require an annual report to the Director of Transportation. This annual report shall be accepted only after a determination by the Director of Transportation and the Director of Planning and Community Development that the Transportation Access Plan is working satisfactorily, and if not, that the plan will be changed and implemented to their satisfaction.

- 3) A special permit granted under this section shall lapse within 2 years if a building permit is not issued and construction has not begun by such date except for good cause.

[VI. With respect to ARTICLE IV, USE REGULATIONS, SECTION 4.07 – TABLE OF USE REGULATIONS:

Add a Principal Use 36B in SECTION 4.07 – TABLE OF USE REGULATIONS with the following:

Principal Uses	Residence				Business			Industry
	S	SC	T	M	L	G	O	I
<p>36B. Research laboratory for scientific or medical research, with a Bio safety Level of Level 1 or Level 2 as defined by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, and National Institutes of Health, provided the use is located on a lot with no less than 50,000 square feet and no more than 65,000 square feet in area and is operated in compliance with all town, state and federal health and safety regulations, and that thirty days prior to a Board of Appeals hearing on the use, and annually, a report detailing hazardous materials operations, processes, disposal and storage shall be reviewed and approved in writing by an independent, recognized expert, the Fire</p>	No	No	No	No	No	SP*	No	No

Principal Uses	Residence				Business			Industry
	S	SC	T	M	L	G	O	I
Chief and Director of Public Health and Human Services. * Permitted by Special Permit only in a GMR-2.0 District								

[VII . With respect to ARTICLE V, DIMENSIONAL REQUIREMENTS, SECTION 5.21

–
 MAXIMUM FLOOR AREA REGULATIONS (PUBLIC BENEFIT INCENTIVES):

Insert “,GMR-2.0” in Table 5.02 after “G-2.0” in the heading of the third column.]

[VIII . With respect to ARTICLE V, DIMENSIONAL REQUIREMENTS, SECTION 5.32

–
 EXCEPTIONS TO MAXIMUM HEIGHT REGULATIONS (PUBLIC BENEFIT INCENTIVES):

Insert “,GMR-2.0” in paragraph 1 after “G-2.0”.]

AMENDMENT OFFERED UNDER ARTICLE 1
 by ARTHUR W. CONQUEST III, TMM-Precinct 6

VII. With respect to ARTICLE IV, USE REGULATIONS, SECTION 4.07 – TABLE OF USE REGULATIONS:

Add a Principal Use 36B in SECTION 4.07 – TABLE OF USE REGULATIONS with the following:

Principal Uses	Residence				Business			Industry
	S	SC	T	M	L	G	O	I
<p>36B. Research laboratory for scientific or medical research, with a Bio safety Level of Level 1 or Level 2 as defined by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, and National Institutes of Health, provided the use <u>does not involve research associated with infectious diseases</u>, is located on a lot with no less than 50,000 square feet and no more than 65,000 square feet in area and is operated in compliance with all town, state and federal health and safety regulations, and that thirty days prior to a Board of Appeals hearing on the use, and annually, a report detailing <u>noxious and hazardous materials operations, processes, disposal and storage shall be reviewed and approved in writing by independent recognized experts, the Fire Chief and Director of Public Health and Human Services.</u> <u>In addition, thirty days prior to a Board of Appeals hearing on the use, the applicant shall submit studies by recognized experts and the Town shall initiate a panel review of qualified experts to insure that the use will be designed and operated to the standards described above. Any applications, including the required studies, shall be referred to the Conservation Commission and Health Department for an advisory report in accordance with the procedures set forth in Section 9.04.</u></p> <p>* Permitted by Special Permit only in a GMR-2.0 District</p>	No	No	No	No	No	SP*	No	No

Recommended Biosafety Levels for Infectious Agents

U.S. Dept. of Health and Human Services, Centers for Disease Control and Prevention and National Institutes of Health.
 Biosafety in Microbiological and Biomedical Laboratories (BMBL) 4th Edition. Washington: GPO, May 1999.

Biosafety Level	Agents	Practices	Safety Equipment (Primary Barriers)	Facilities (Secondary Barriers)
1	Not known to consistently cause disease in healthy adults.	Standard Microbiological Practices	None required	Open bench top sink required
2	<u>associated with human disease. Hazard = percutaneous injury, ingestion, and mucous membrane exposure.</u>	BSL -1 practice plus: *Limited Access * Biohazard warning signs *“Sharps precautions *Biosafety manual defining any needed waste decontamination or medical surveillance policies	Primary barriers= Class I or II BSCs or other physical containment devices used for all manipulations of agents that cause splashes or aerosols of infectious materials; PPEs: laboratory coats; gloves; face protection as needed	BSL-1 plus Autoclave available

EXPLANATION:

Zoning By-law 36A currently prohibits noxious and hazardous agents. 36A requires the applicant to provide expert studies to insure public safety, and requires that these studies be submitted to the Department of Public Health and for review by the Conservation Commission. Proposed 36B Amendment allows noxious and hazardous agents, and drops the applicants provision of expert studies and the review by the Conservation Commission. It only requires reports by the Director of Public Health and the Fire Chief, both town employees beholden to the Board of Selectmen for job security.

The presence of a Level 2 Lab involves increased threat to the public. Therefore this amendment proposes that safety measures be increased appropriately in amended 36B. The U.S. Dept. of Health and Human Services describes a Level 2 Lab as associated with human disease. Safety measures limit public access, and require both ongoing medical surveillance and decontamination procedures. If a containment breach is discovered only after potentially contaminated lab employees have left for lunch or to run errands, the possibility arises for local restaurants or businesses to be shut down to enable health inspectors to determine and or address potential contamination. Therefore

to address these issues, Citizen's Amendment 36B. proposes that the study of infectious diseases be prohibited, the applicant provide expert studies and an expert panel review, review of studies by the Health Department and Conservation Commission review and well publicized public hearings to insure public safety before a Level 2 permit is granted.