

MEMORANDUM

TO: Bernard Greene, John VanScoyoc, Miriam Aschkenasy, Michael Sandman, Paul J. Warren, David Pollak, Katherine Florio, Kelly Hardebeck, Linda Olson Pehlke, Markus Penzel, Carlos Ridruejo, Lee Selwyn; John Doggett

CC: Dennis Doughty, Harry Friedman, Steve Heikin, Charles Carey, Kara Brewton, Devon Fields, Lisa Portscher

FROM: Dick Benka

RE: MBTA-CA Harvard Street Plan Issues

DATE: September 25, 2023

INTRODUCTION

I chaired the Select Board’s MBTA-CA Multi-Family Permitting Committee (the “MBTA-CA Committee”) that developed the M-District+ Plan to bring the Town into compliance with the MBTA Communities Act (the “MBTA-CA”). I am, however, writing this memo solely on my own behalf, since the MBTA-CA Committee did not review the Harvard Street Plan that is now a portion of the “Consensus Plan” under Special Town Meeting 1, Article 3 (STM1, Art. 3) and, with the inclusion of mandatory first-floor commercial space, under Special Town Meeting 4, Article 1 (STM4, Art. 1).

SUMMARY

The underlying concept of “upzoning” Harvard Street by increasing the allowable density of use has merit, and a great deal of work has gone into the formulation of the Harvard Street Plan. The Plan, however, presents significant issues outlined in this memo that deserve more thoughtful analysis. Many of these were noted in my memo of August 15, 2023 to the Select Board but have not been addressed in STM1, Art. 3 or STM4, Art. 1.

Without substantial amendments to address the issues outlined in this memo, favorable action on the Harvard Street portion of the “Consensus Plan” would be premature. The requisite thoughtful consideration of the issues could be triggered by (a) referring STM1, Art. 3 and/or STM4, Art. 1 back to the Planning & Community Development Department for further refinement and (b) voting favorable action on the M-District+ Plan (STM1, Arts. 4 or 5) in order to provide compliance with the MBTA-CA. This could avoid a “no action” vote on STM1, Art. 3 and/or STM4, Art. 1.

At the beginning of 2023, the Harvard Street Plan was intended to be the Town’s vehicle for MBTA-CA compliance. This forced the Harvard Street Plan into a legal “straightjacket.” For example, the MBTA-CA did not allow the Town to mandate first-floor commercial uses on Harvard Street or even to consider inducing greater housing affordability by imposing limits on residential unit sizes. But because the M-District+ portion of the “Consensus Plan” now provides legal compliance with the MBTA-CA, the Town is not compelled to rush ahead with a flawed Harvard Street Plan to meet the December 31, 2023 deadline for MBTA-CA compliance.

The Harvard Street Plan focuses on increasing the density of properties on Harvard Street and on the design of first-floor commercial space (high ceilings, large windows, etc.) on that street. At the same time, it would create a series of problems that require more thoughtful consideration:

I. There would be significant adverse physical and visual impacts on Harvard Street and on abutting residential neighborhoods.

- While effective building mass would be increased from one or two stories to four stories or 48 feet (plus 10 feet of rooftop units), rear yard setbacks from abutting residential properties and neighborhoods would be sharply reduced from at least 30 feet to only 5 or 10 feet.
- The Harvard Street Plan includes not only Harvard Street but also various “side streets” that feed into Harvard Street. The side yard setbacks for properties on these side streets would be totally eliminated, allowing 58-foot-high (48’ + 10’) buildings to be built up to the lot lines adjoining residential neighborhoods.
- “Packing box” buildings with flat walls of fiber cement panels and “punched” windows would be permitted on Harvard Street, with the total permitted height of 58 feet along virtually the entire length of the street.
- Bars, taverns, breweries and distilleries could be installed “as of right” in existing residential buildings on Harvard Street.

II. The commercial vitality of Harvard Street would be jeopardized.

- A \$350,000 study of parking needs and availability in Coolidge Corner and JFK Crossing has been authorized by the Select Board. Nevertheless, the Harvard Street Plan would significantly reduce residential parking requirements and eliminate virtually all commercial parking requirements before receiving any of the results of that study.
- Town Meeting has also voted for a study to ensure the availability of Brookline Village merchant parking now located on the Town-owned Kent Street/Station Street parking lot. That study has also not been completed, but the lot is included in the Harvard Street Plan, again with the elimination of virtually all commercial parking requirements.
- As a result, there is no analysis of whether commercial activity can flourish with only local foot and bicycle traffic, whether there is a commercial need for automobile parking that could draw customers from a wider area, or whether there would be adequate parking for both merchants and customers.
- At the same time, the Harvard Street Plan would impose an onerous parking requirement on hotels (4 to 5 times that utilized elsewhere in the Town) that would make revenue-producing hotel development infeasible.
- There is no protection against the actual reduction of tax-generating commercial space, as in the replacement of a two-story commercial building with a building with only partial first-floor commercial space.
- There has been no apparent analysis of the adequacy of the first-floor commercial space requirement of 60% of frontage and 30 feet of depth.
- The “incentives” allowing increased upper-floor residential rents targeted at households with greater incomes in exchange for first-floor commercial “build outs” are ill-defined and, as acknowledged in the Select Board’s own Article Description, are “unnecessary” and “redundant,” even more so now that commercial space can be mandated.
- The “incentives” have not defined what “commercial” activity will actually enhance Harvard Street, nor do they ensure that the benefits of “incentives” will actually flow to commercial tenants.

III. The Harvard Street Plan would undermine the Town’s explicit affordable housing goals, has been proposed without apparent planning for any resulting Town and School capital and operational needs, and would subject religious and non-profit institutions to disparate treatment.

- Because first-floor commercial use can now be mandated and thus the commercial build-out “incentives” are no longer even arguably required, the primary impact of these incentives would be to exclude households with lower incomes from Harvard Street affordable units, in a manner inconsistent with the Town’s inclusionary zoning policy.
- Because the Harvard Street Plan is no longer required to comply with the stringent guidelines of the MBTA-CA due to M-District+ compliance, the Harvard Street Plan misses the now-available opportunity to require the inclusion of smaller, more affordable residential units along with uber-large, “luxury” units.
- There is no indication of any planning for the Town and School capital and operational investments that would be necessary to serve the projected 800 newly created Harvard Street units (in addition to over 500 units identified as already approved within one block of Harvard Street) or the anticipated commercial development, including any analysis by the affected Town and School departments.
- The problems with enacting a rushed plan are typified by the manner in which the Harvard Street Plan imposes disparate requirements on religious institutions and religious and non-profit schools, requiring each of them to provide parking while imposing no such requirements on new or expanded secular places of assembly or secular, for-profit schools.

DISCUSSION

I. There would be significant adverse physical and visual impacts on Harvard Street and on abutting residential neighborhoods.

- A. Abutters and other neighboring residential properties would be significantly impacted by substantial increases in the heights and drastic reductions in the rear yard setbacks of Harvard Street buildings.

The Harvard Street Plan would substantially reduce rear yard setbacks for properties fronting on Harvard Street. This is a particular problem for Harvard Street properties abutting residential T (two-family), F (three-family), or M (multi-family) districts to the rear where there would be the most drastic reductions in setback protections.

North of Coolidge Corner, most Harvard Street properties back onto T zones, with some properties backing onto F or M zones. South of Coolidge Corner, many of the Harvard Street properties back onto M zones, with a few backing onto an F zone.

While Exhibit B of the Select Board’s Description of the Harvard Street Plan (STM1, Art. 3, p. 3-120) purports to show the current setback requirements, it does not account for properties abutting residential zones. For example, the minimum rear yard setback for a commercial use in an L (local business) district is shown as 0 feet in Exhibit B, but that is not accurate if the property abuts a residential district. In that case, Zoning By-Law Section 5.73.1 requires a minimum rear yard setback of at least 20 feet. And for buildings with dwelling units, the goal of the Harvard Street Plan, the existing minimum rear yard setback increases **to at least 30 feet**. (And arguably 40 feet for mixed-use buildings. See Appendix A & n.9 below.)

In addition, while the existing theoretical building height along Harvard Street can be 40 feet or more, buildings are **effectively limited to one or two stories** by floor area ratios (FAR – the ratio of the square footage of the building to the square footage of the lot) of 1.0, 1.75, or 2.0. In contrast, the Harvard Street Plan would increase building heights to **four stories and 48 feet** (with an additional 10 feet of rooftop mechanicals) and there would be **no** remaining FAR constraint. (SMT4, Art. 1, pp. 108, 112; (“Form-Based Zones Standards” (“FBZ”) 11, 15).¹

In sum, for most of Harvard Street, abutting residential properties and other nearby properties could be facing either a high blank wall a few feet away or windows looking down into their homes or back yards. **Instead of a one- or two-story building 30 or more feet from the lot line the proposed Harvard Street zoning would allow up to a four-story building 5 or 10 feet from the lot line.** The single-minded attention to “upzoning” Harvard Street would come at the expense of existing residential neighborhoods.

B. Side yard setbacks for properties on “side streets” running into Harvard Street would be totally eliminated, allowing 58-foot-high structures to be built up to the lot line.

In addition to dramatically changing the rear yard setbacks for buildings that front on Harvard Street, the Harvard Street Plan extends the new H-MS, H-MSO, and H-MST zoning to lots on “side streets” that run off of Harvard Street, including Verndale, Coolidge, Beals, Shailer, Babcock, and Vernon Streets, and Alton Place. This would drastically change the existing zoning provisions that impose setbacks based on building mass (height and façade width). The new Harvard Street Plan has just one rule: **no minimum side yard setbacks at all** despite increases in building mass, effectively treating even outsized buildings on “side streets” as though they were all buildings on Harvard Street sharing party walls (STM4, Art. 1, pp. 108, 112; FBZ pp. 11, 15):

- Current Zoning (Zoning By-Law (“ZBL”) Table 5.01; Sections 5.07, 5.64)
 - Mass/Height – effectively **1 or 2 stories** because of FAR limits
 - For current L, G and M zones abutting residential zones, side yard setbacks can vary based on the particular zoning district, the building height, the length of building side wall, and the building use.
 - For example, the side yard setback for a commercial building abutting a T or F zone is **20 feet**. (ZBL Table 5.01; Section 5.64).
 - Other combinations of zones, uses and building massing use various formulas such as $(\text{Height} + \text{Length})/6$; $10 + (\text{Length}/10)$; and $20 + (\text{Length}/10)$. (ZBL Table 5.01; Sections 5.07, 5.64).
 - For example, for a 48’ high building with a 60’ side wall length, the formulas could yield side yard setbacks of **between 16 and 26 feet**.
- Proposed Zoning – most “side street” zoning (H-MS, H-MSO, H-MST)
 - Mass/Height – **4 stories** (48 feet plus 10-foot rooftop units) (**no** FAR limits)
 - Side yard setbacks – **none** (and **no** stepbacks)

¹ The page citations to STM4, Art. 1 are based on the digital version as received, and may be slightly incorrect. The “FBZ” version is based on the hard-copy numbering of the “Form-Based Zones Standards” included within STM4, Art. 1. The proposed zoning would apply additional “stepbacks” of 5 or 10 feet before the full allowable 58’ height was reached, but the proposed zoning (a) would still allow 35’-foot building height at the rear yard setback line only 5 or 10 feet from the lot line; (b) would not apply any stepbacks at all to Harvard Street lots less than 100 feet deep in H-MS or H-MS-O zones; and (c) would require no stepbacks at all for Harvard Street lots abutting M zones. (STM4, Art. 1, pp. 109, 113; FBZ pp. 12, 16).

With the proposed “one-size-fits-all” zoning, there are **no minimum side yard setbacks**² regardless of the abutting residential district, the intensity of use of the new development, or the size of the building being constructed. Consequently, a **58-foot-high structure** including the rooftop units (and, as noted below, potentially housing a tavern or brewery) could be built **right up to the lot line** adjoining T, F or M properties, thus impacting abutters and potentially entire streets.

For example, 64 Coolidge is a one-family house that could be redeveloped as a 58-foot-high building, with no side yard setback from the abutting T zone. 8 Alton Place is a one-story office building that could likewise be replaced by a 58-foot-high building with no side yard setback from the abutting M zone.

C. The Harvard Street Plan allows the development of “packing box” buildings.

The Harvard Street Plan will permit a major commercial corridor to be populated with buildings that mimic packing boxes.

- There is no guarantee that brick buildings with exquisite detailing such as those shown in the alluring photo on the cover of the Form-Based Zoning packet (STM4, Art. 1, p. 89) will be the outcome of the proposed “form-based zoning.” To the contrary, the Harvard Street Plan allows fiber cement panels, windows “punched” three inches into those flat panels, fiber cement sills, and a parapet or cornice of undefined dimension slapped on at the top of the panels. (STM4, Art. 1, pp. 140, 149; FBZ pp. 42, 51).
- The reality is a zoning by-law for almost the entire length of Harvard Street that would permit a series of 4-story buildings looking like packing boxes, 48 feet high with an additional 10 feet of rooftop mechanicals, and totally incongruous with existing architecture.
- And, apart from the permitted materials, should virtually all of Harvard Street be zoned to allow 4-story buildings, or should the allowable building height be varied depending on factors such as lot depth, abutting neighborhoods, and existing building sizes?

D. The Harvard Street Plan will allow the as-of-right incursion of bars and breweries into existing multi-family housing.

The Harvard Street Plan incorporates a number of existing residential (M or Multi-Family) districts that happen to be on Harvard Street and that would be rezoned to H-MSO (east side of Harvard between Naples and Stedman) or H-MST (east side of Harvard from Alton Place to Stop & Shop; west side basically from Foster to Harris).

- Any existing commercial use in buildings in these areas tends to be “quiet” (e.g., an antique store, real estate office, or dentist’s office).
- Rezoning to H-MSO or H-MST would allow uses that include a **brewery, distillery, bar, restaurant or tavern** to be put into existing residential buildings **as of right**. (STM4, Art. 1, p. 175; FBZ p. 77).
- Again, it seems the “one-size-fits-all” rezoning for Harvard Street has been proposed without taking into account such quality-of-life issues.

² In fact, the Harvard Street Plan goes even further and imposes a **maximum** side yard setback of 5 feet in H-MST districts.

II. The commercial vitality of Harvard Street would be jeopardized.

The proposed zoning – without awaiting the results of two pending parking studies -- would adopt rules that could significantly affect the viability of commercial activity along Harvard Street.

- A. Parking requirements would be reduced without analysis of the impact on commercial viability, a particularly inexplicable decision given a \$350,000 parking needs study of Coolidge Corner and JFK Crossing already commissioned by the Select Board and a further study of Brookline Village merchant parking needs voted by Town Meeting.

The Harvard Street plan requires no parking for almost all commercial uses, and 0.5 space/unit for residential uses.

- Existing residential parking minimums in the Transit Parking Overlay District (T-POD) were considered by Town Meeting only two years ago, at the Fall 2021 Town Meeting. At that time, the required parking minimums when additional units were being added were set at 0.5 spaces for studios and 1.0 spaces for other units.
- These 2021 T-POD requirements were consistent with data presented to Town Meeting: while 30% of households in the T-POD did not have a vehicle, the average number of vehicles per household in the T-POD was nonetheless 1.25, and for renters was 0.75.
- The Harvard Street Plan, however, requires only 0.5 space per dwelling unit without providing any analytical basis. (STM4, Art. 1, p. 175; FBZ p. 77). The number falls short of the apparent need for 1.25 spaces for the average unit, or even 0.75 spaces per rental unit based on data presented only two years ago.
- The current requirements for parking for commercial uses in the T-POD range from no minimum requirement for certain storefront uses to one space per 250 square feet for upper floor medical office use.
- The Select Board has authorized a \$350,000 study to determine parking needs and availability for Coolidge Corner and JFK Crossing, an issue that has become more critical with the substantial expansion of the Coolidge Corner Theater (2 theaters with 200 seats, a large community/reception room with catering kitchen, and a conference room) and the continuing loss of on-street parking to outdoor dining.
- In comments to the Select Board, David Gladstone, President of the Brookline Chamber of Commerce, noted the adverse impact of inadequate parking on the business environment, in contrast to areas like The Street, the Atrium, and Chestnut Hill Square that offer substantial free parking.
- Despite the fact that an exhaustive parking study has been authorized, the Harvard Street Plan proposes to change zoning to require **no** parking for virtually all commercial uses. (STM4, Art. 1, pp. 174-176; FBZ pp. 76-78). As with the reduction in the residential parking requirement, there is no analytical basis for this zoning change.
- For example, there is **no** required parking at all for “Health Care Services” or “General Office” uses, both of which are allowed as-of-right in H-MS, H-MSO, and H-MST zones. In fact, existing parking minimums (ZBL, Section 6.02) have become parking maximums (STM4, Art. 1, pp. 174, 175; FBZ pp. 76, 77). Should additional medical offices (and medical office buildings) and general offices (and office buildings) be permitted with no parking? Or even inadequate parking? What will the effect be on the availability of public parking for other commercial uses?

- Common sense dictates that questions such as the following be answered before significant changes are made in parking requirements: What will the \$350,000 study show? Can commercial areas thrive, or even survive, without businesses that can attract customers who come by automobile from a wider geographic area? What level of parking will be needed to ensure an adequate customer base? Should on-site parking be required for commercial and residential development? What are the appropriate levels of parking requirements for different commercial uses and residential unit sizes? Should developers – in exchange for the significant upzoning being offered – be required to provide on-site parking or to contribute to the creation of additional spaces at the Centre Street or other Town parking lots?
 - Moreover, Town Meeting at its 2022 Annual Meeting, in connection with the potential disposition of the Town’s Kent Street/Station Street parking lot, voted for a study that would ensure adequate sites for 37 existing Brookline Village merchant parking spaces and 2 existing Zipcar spaces on that lot. That study has not been completed. Nevertheless, the Harvard Street Plan proposes to rezone the lot as H-MS with no required parking for most commercial uses. What is proposed for dealing with the existing parking needs of Brookline Village merchants?
 - Recognizing the need for parking studies in the Town’s major commercial areas but then proceeding with significant zoning changes without learning the results of those studies further undermines the credibility of the Harvard Street Plan.
- B. While eliminating parking requirements for almost all commercial uses, the Harvard Street Plan imposes onerous parking requirements that would make revenue-generating hotel uses infeasible.

Hotel development has been viewed as an ideal revenue source for the Town, providing not only property taxes but also occupancy taxes without imposing significant cost demands on the Town or Public Schools. The Harvard Street Plan, however, seems designed to make hotel development economically infeasible.

- Hotel development has previously been encouraged by the Town through the creation of special districts with reduced hotel parking requirements: Davis Path (0.5 spaces per room) facilitating the Homewood Suites; Emerald Island (0.4 spaces per room) facilitating the Hilton Garden Inn.
 - However, while the Harvard Street Plan reduces or eliminates virtually all other commercial and residential parking requirements, it demands two required parking spaces per room for hotels and bed and breakfast establishments. (STM4, Art. 1, p.175; FBZ p. 77).
 - Is this a conscious effort to eliminate a prime potential source of local revenue? What is the underlying analysis? Do we want to preclude even boutique hotels (which could, for example, be encouraged by imposing limits on size and function rooms)? What is the appropriate required level of parking for hotel uses?
- C. There is no analysis demonstrating that a 30-foot depth and 60% of frontage will be sufficient to attract desired commercial activity to Harvard Street.

The current zoning for L and G districts requires that at least 60% of ground-floor street frontage, to a depth of at least 15 feet, be devoted to uses other than residential, residential related, or

parking. It has been recognized that the 15-foot depth is insufficient; the Harvard Street Plan proposes to double that depth to 30 feet.

- As an element of a major zoning change, what is the analytical basis for the 30-foot depth? Was it anything more than simply doubling the prior 15-foot depth?
- Given that the allocated depth would necessarily include not only space accessible to the public but also additional spaces such as kitchen and bathroom space for restaurants as well as storage and any office space for all commercial uses, would the 30-foot depth in fact be sufficient for desirable categories of commercial activity, particularly in narrower buildings? What is the square footage that the 30-foot depth would be expected to yield when applied to various properties, and what is the square footage required for desired commercial uses?
- While not definitive, an M.I.T. real estate course noted that retail store dimensions in a neighborhood center could range from 20' x 40' to 75' x 120' and that convenience stores, restaurants, and service shops were typically between 40' and 70' in depth.
<https://web.mit.edu/course/4/4.293/!Phoenix/Assignment%206%20-%20Final%20Writeup/Retail%20Store%20Dimensions%20and%20Lease%20Terms.doc#:~:text=Retail%20store%20dimensions%20within%20a,%20to%2075'x120'.&text=Convenience%20stores%2C%20restaurants%2C%20and%20service,from%20100'%20to%20120>
- Could the 30-foot depth allow some retail activities (a take-out food counter) while foreclosing others (sit-down restaurants; retailers including those that might attract customers from a wider geographic area)? What commercial uses or mix of uses should be encouraged and what depth would be sufficient for those uses?
- Similarly, what is the basis for permitting 40% of the frontage to be assigned to residential uses in a prime commercial corridor (Lexington, for example, uses a 20%/20-foot limitation on residential uses in its central business districts)? Again, there is an analytical gap for decisions that could affect Harvard Street for decades to come.³

D. The Select Board's own Explanation makes clear that "incentives" are "unnecessary" and "redundant."

Before the Town could mandate first-floor commercial space on Harvard Street, "incentives" were proposed as a tool to encourage commercial activity by allowing property owners to increase the rents or sales prices for any "affordable" residential units in return for meeting "physical requirements and specifications of building out ground-floor commercial space."⁴ In essence, the "affordable" units would be targeted to households with higher incomes.

The M-District+ Plan developed by the MBTA-CA Committee will now provide the necessary legal compliance with the MBTA-CA, so commercial uses can now be mandated on Harvard

³ In addition, retail stores of less than 5,000 sf are allowed as of right in H-MS, H-MSO and H-MST districts, but retail stores of greater than 5,000 sf are required to go through the special permit process in H-MS districts. (STM4, Art.1, p. 176; FBZ p. 78). Would that also discourage stores that might be magnets for customers?

⁴ Thus, the cap on Eligible Households (and thus on rents or sales prices tied to income) would be raised from the Town's existing limits of 50% of the Area Median Income (AMI) for rental units and 80% of AMI for the sale of owner-occupied units to "incentivized" levels of 80% and 100%, respectively, if the development met so-called "physical requirements and specifications of building out ground floor commercial space." (STM4, Art. 1, pp. 65, 72).

Street.⁵ Nevertheless, “incentives” have persisted in the Harvard Street Plan, despite the fact they were admittedly “unnecessary” and “redundant” even before ground-floor commercial space could be mandated.

- As set out in the previous discussion of setbacks, the Harvard Street Plan provides significant “upzoning” – from an effective FAR limit of one or two stories to four stories (with no FAR limits). Thus, a property owner would have reason to develop a property under the new zoning even if mandated first-floor commercial space were marginally less profitable than residential space.
- Moreover, the Select Board’s own Article Description establishes that Harvard Street first-floor retail space is more profitable than residential space and that **incentives are not necessary**: “Professional proforma by EDAB confirms GF retail [ground-floor retail] is highest and best use: **Mandate or incentive NOT necessary. Redundant financial incentive** that increases value of each unit by \$150,000 makes GF retail a certainty.” (STM1, Art. 3, p. 3-112).
- As discussed below, the resulting “unnecessary” increases in residential rents (and sales prices for owner-occupied units) creates conflicts with the Town’s inclusionary zoning housing affordability standards.

E. The Harvard Street Plan has been put forward without any plan for commercial development on Harvard Street and without any real protection for commercial tenants.

STM4 was proposed by the Select Board to allow first-floor commercial development to be mandated along all of Harvard Street, but there has been no analysis of the portions of Harvard Street where the mandate should be applied or of the type of commercial activity that should be encouraged. And, at the same time, the structure of the “incentives” would allow landlords to take advantage of the incentives and thus raise residential rents without ensuring that commercial tenants would actually benefit.

The provisions of STM4 raise many questions.

- STM4 provides sufficient “scope” to mandate commercial activity along all of Harvard Street. But what standards should be used for picking the areas where commercial use will actually be mandated? Are there sections of Harvard Street where there is no commercial use at the present time, but there should be? Or vice versa? On what analytical basis?
- The amendment to Zoning By-Law Section 4.08(10) says that Ground Floor Commercial Standards and Guidelines will be adopted by the Select Board in consultation with the Economic Development Advisory Board, but the By-Law expressly limits such Standards and Guidelines that may be developed in the future “to the physical requirements and specifications of building out ground floor commercial space.” (STM4, Art. 1, p. 72). This indicates that **any** ground-floor commercial space “build out” can earn the “incentive” of greater residential rents. But should a back office for an accounting firm be equated to a store that will draw substantial foot traffic, though both are “commercial space”? And, if all “commercial space” is not equivalent but the Standards and Guidelines can only address the physical requirements of building out commercial space in general, how will the necessary distinctions be identified and implemented?

⁵ In addition, after months of discussion, the State has allowed mandated commercial use, but only for the first floor, only with State approval, and only for properties representing 25% of the required capacity under the MBTA-CA.

- Could the “incentives” actually lead to revenue-producing commercial space being reduced, since the “incentives” would reward the demolition of an existing two-story commercial building and its replacement by a four-story building with a minimal (30-foot deep) “build out” of ground-floor commercial space? Indeed, any projects that include only the minimal ground-floor commercial requirements could result in a net reduction of commercial space. The Harvard Street Plan includes no requirement that the amount of existing commercial space (and revenue) at least be maintained if not actually increased in any redevelopment.
- With the now-existing ability to mandate ground-floor commercial space, how do the “incentives” actually enhance the development and survival of viable businesses? How does the Harvard Street Plan prevent developers/landlords from meeting the “physical requirements and specifications of building out ground floor commercial space” – and thus being allowed to increase residential rents – while simply offsetting any cost of the “build outs” through other elements (e.g., higher monthly rents, no offer of free months of rent) of the total commercial rent package being offered to tenants?

III. The Harvard Street Plan would undermine the Town’s explicit affordable housing goals, has been prepared without apparent planning for any resulting Town and School capital and operational needs, and would subject religious and non-profit institutions to disparate treatment.

A. The Harvard Street Plan “incentives” do not conform to the Town’s affordable housing policy.

The concept of “incentivizing” first-floor commercial development on Harvard Street was developed at a time when it was believed that such first-floor uses could not be mandated. Thus, the “incentives” – which allowed developers to target upper-story units to higher income residential renters or purchasers – served the theoretical purpose of encouraging first-floor commercial use.⁶ Now, however, thanks to the M-District+ Plan, first-floor commercial use on Harvard Street can be mandated and thus the proposed incentives raise a more fundamental question – is their inevitable impact consistent with the Town’s affordable housing goals?

- The Town’s existing inclusionary zoning policy targets affordable housing units to renters with incomes less than 50% of the AMI and to purchasers with incomes less than 80% of the AMI.
- The Harvard Street Plan “incentives,” no longer even arguably necessary to encourage first-floor commercial development, raise those limits to 80% of AMI (renters) and 100% of AMI (purchasers).
- The reality is that units on Harvard Street will **not** be available to households in a range of incomes. The EDAB/Select Board analysis has made clear that it is already in a developer’s best interest to create first-floor commercial space – even without **any** incentives. Moreover, as noted above, nothing prevents developers from recapturing the cost of commercial “build outs” through other elements of overall commercial rent packages.

⁶ Although, as noted above, a “professional proforma,” the Economic Development Advisory Board, and the Select Board deemed the incentives “unnecessary” and “redundant” to accomplish this stated goal.

- As a result, developers will naturally do the commercial “build outs” necessary to trigger the “incentives,” and **all** “affordable” units on Harvard Street will become available only to those at the top end of the eligible range.
 - The obvious question: while the result on Harvard Street has been touted as providing “workforce” housing, is it in fact the Town’s preferred policy to effectively and totally exclude those with lower incomes from access to affordable housing on Harvard Street? Or does this issue deserve further thoughtful exploration?
- B. The Harvard Street Plan misses the opportunity to require a range of unit sizes and thus to avoid the exclusive creation of uber-large, “luxury” units.

The MBTA-CA prohibits municipalities from limiting the size of units. Because the M-District+ Plan will now provide legal compliance with the MBTA-CA, that prohibition no longer need be applied to Harvard Street.

- The Town could now require that at least some of the market-rate units on Harvard Street be moderate in size, to mitigate the current tendency of developers to build large, “luxury,” high-end-finish units.
- Concomitantly, the Town could also, for example, require that in addition to commercial first-floor use there be at least as many residential units as there are floors in a building, so that a four-story building would be required to have a minimum of four residential units. This would not only encourage the development of at least some units of more moderate size on Harvard Street, but would also bring such a building within the Town’s inclusionary zoning by-law, since it would meet the four-unit threshold.

Unfortunately, the Harvard Street Plan, originally developed with the understanding that it had to comply with the requirements of the MBTA-CA, does not take advantage of the now-existing opportunities to better tailor its terms to other community goals.

- C. The Harvard Street Plan does not reveal any apparent planning to provide Town and School services for the estimated 800 housing units or any anticipated commercial development.

The Select Board’s Explanation states that the Harvard Street Plan will result in the estimated creation of 800 new housing units, by definition all clustered along the Harvard Street corridor. (STM1, Art. 3, p. 3-112). This is in addition to 1,325 new housing units identified as already planned and approved in the Town, of which 510 are within approximately one block of Harvard Street.⁷

Again, this projection raises a host of questions:

- Where is it expected that the 800 units will be developed? Where are maps showing the locations of the build out of those 800 units? Does that number assume that every property is built out to the maximum limits, including 4 stories, 5- or 10-foot rear setbacks, and no side yard setbacks? And where and to what extent is commercial development expected to occur? What is the expected timing of the build out?

⁷ 40 Centre (40 units); 1299 Beacon (65); 10-18 Pleasant (143); 445 Harvard (25); 500 (24); 209 Harvard (44); 108 Centre (54); 32 Marion (115). See [All Politics is Local/ Special Edition \(goodgovernmentforbrookline.com\)](http://goodgovernmentforbrookline.com)

- Has there been any study of the capital and operational improvements that will be necessary to serve 800 units and the ability of the Town and Schools to meet those needs? Or the impact of those units and any expected commercial development when added to the 510 units already approved in close proximity to Harvard Street? What are the results of any such studies?
 - Has there been consultation with, and analysis by, other departments and divisions, including the Schools, Parks & Recreation, Transportation (including parking needs) Water & Sewer, the Senior Center, Fire and Police? If so, where are the results of any such consultation and analysis?
- D. The Harvard Street Plan would subject religious and non-profit institutions to disparate treatment.

The Harvard Street Plan imposes minimum parking requirements on religious uses, on religious educational facilities and on non-profit educational facilities while imposing no such requirements on non-religious uses or on for-profit educational facilities. This disparate treatment is yet another factor that requires referral of the Harvard Street Plan for rethinking.

- Massachusetts General Laws ch. 40A, Section 3, the “Dover Amendment,” provides that no zoning ordinance shall prohibit or regulate the use of land or structures “for religious purposes or for educational purposes on land owned or leased by ... a religious sect or denomination, or by a nonprofit educational corporation”
- The Harvard Street Plan imposes a minimum parking requirement of **1 space per 550 square feet of gross floor area** on all “Religious & Educational Uses Protected by M.G.L. 40A Sec.3,” thus singling out properties governed by the Dover Amendment. (STM4, Art. 1, p.174; FBZ p. 76).
- While the Harvard Street Plan imposes minimum parking requirements on religious assembly spaces, it imposes **no** such minimum parking requirement on new or expanded non-religious “Assembly Spaces,” including “other assembly activities including but not limited to a theater [or] cinema.” (STM4, Art. 1, pp. 174, 179; FBZ pp. 76, 81).
- And while the Harvard Street Plan imposes minimum parking requirements on religious and non-profit educational facilities, it imposes **no** such minimum parking requirements on new or expanded non-religious, for-profit “Child Day Care Centers” and “Educational Services,” the later defined broadly to include “general or specialized pre-primary, primary, secondary, vocational, or tertiary education, instruction, or training in subject areas, skills, or vocations.” (STM4, Art. 1, pp. 174, 180; FBZ pp. 76, 82)⁸ The absence of any parking requirements for non-religious, for-profit educational facilities extends to “classrooms, administrative offices, research centers, laboratories, auditoria, study halls ... libraries” and also “on-campus housing.” Religious or non-profit education facilities, however, must satisfy minimum parking requirements.
- The intent, justification and impact of the distinctions drawn in the Harvard Street Plan require further examination.

The disparate impact of the Harvard Street Plan is simply another example of why the Town would be ill-advised to rush into a significant rezoning of Harvard Street, when that rush is no longer necessary to comply with State law.

⁸ Moreover, the secular, for-profit assembly and educational uses can be established as of right, without even a special permit, in H-MSO and H-MST zones. (STM4, Art. 1, p.174; FBZ p. 76).

APPENDIX A

Existing and Proposed Rear Yard Setbacks from Residential Districts⁹

Existing Zoning	Existing Rear Yard Setback	Proposed Zoning	Proposed Rear Yard Setback	Examples with general locations
L, G abutting T or F district to rear	At least 20 feet. 30 to 40+ feet with dwelling units.	H-MS, H-MSO	<ul style="list-style-type: none"> • Lot < 100 ft. deep: 5 ft. (full 48'+ height) • Lot >= 100 ft deep: 10 ft. (full 48'+ height after 10' stepback; stepback height is 35') 	<ul style="list-style-type: none"> • Harvard St. west side: Verndale/Kenwood block to K.I., Williams to south of Shailer • Harvard St. east side: Lawton to Naples
L, G abutting M district to rear	At least 20 feet. 30 to 40+ feet with dwelling units.	H-MS, H-MSO	<ul style="list-style-type: none"> • Lot < 100 ft. deep: 5 ft. (full 48'+ height) • Lot >= 100 ft deep: 10 ft. (full 48'+ height) • No stepbacks 	<ul style="list-style-type: none"> • Harvard Street east side: Ridley School to Green St. • 16-20 Webster Place
M abutting M district to rear	At least 30 feet, up to 40+ feet	H-MSO	<ul style="list-style-type: none"> • Lot < 100 ft. deep: 5 ft. (full 48'+ height) • Lot >= 100 ft deep: 10 ft. (full 48'+ height) • No stepbacks 	<ul style="list-style-type: none"> • Harvard Street east side: Naples to Stedman
M abutting F district to rear	At least 30 feet, up to 40+ feet	H-MST	<ul style="list-style-type: none"> • Lot < 100 ft. deep: 5 ft. • Lot >= 100 ft deep: 10 ft. • 5'-10' stepbacks w/35' height; full 48'+ height after stepbacks 	<ul style="list-style-type: none"> • Harvard Street west side: 152-158 Harvard St (Vernon, Foster St. area)
L, G abutting M district to rear	At least 20 feet. 30 to 40+ feet with dwelling units.	H-MST	<ul style="list-style-type: none"> • Lot < 100 ft. deep: 5 ft. (full 48'+ height) • Lot >= 100 ft deep: 10 ft. (full 48'+ height) • No stepbacks 	<ul style="list-style-type: none"> • Harvard Street east side: 155-203 Harvard (n. of Alton Pl.); School to Homer; 29-45 Harvard (Linden St. to across from Pierce St.) • Harvard Street west side: 196 Harvard (gas station)
M abutting M district to rear	At least 30 feet, up to 40+ feet	H-MST	<ul style="list-style-type: none"> • Lot < 100 ft. deep: 5 ft. (full 48'+ height) • Lot >= 100 ft deep: 10 ft. (full 48'+ height) • No stepbacks 	<ul style="list-style-type: none"> • Harvard St. east side: 209-221 (s. of Stearns Rd.); 171-181 (s. of Alton Pl) • Harvard St. west side: 164-190 Harvard St. (n. of Harris)

⁹ A number of existing zoning rules currently protect T, F or M (residential) districts that abut L or G (commercial) districts, which constitute most of the length of Harvard Street:

- Under existing ZBL Section 5.73, the rear yard setback in an L or G district abutting a T, F or M district must be at least 20 feet. This would apply to a building with no dwelling units. There are additional potential setbacks for larger buildings under Table 5.01.
- Under ZBL Section 5.07, dwellings in L and G districts must meet the rear yard setback requirements of the M District with the same maximum FAR (a G-1.75 district must meet the requirements of an M-2.0 district).
- Thus, buildings in L-1.0 zones (much of Harvard Street) with dwellings must meet the rear yard setback requirements for M-1.0 districts under Table 5.01, which is 30 feet for dwelling structures and 40 feet for “any other structure or principal use,” which could therefore include mixed-use (commercial and residential) structures as contemplated for Harvard Street.
- Buildings in G-1.75 and G-2.0 zones (Coolidge Corner and Brookline Village) with dwellings must meet the rear yard setback requirements for M-2.0 districts, which is again at least 30 feet for dwelling structures and at least 40 feet for “any other structure or principal use.” There are additional potential setbacks for larger buildings under Table 5.01.
- For existing M districts, the minimum rear yard setback is, as noted above, 30 feet for dwellings and 40 feet for “any other structure or principal use,” with additional potential setbacks for larger buildings in M-2.0 districts under Table 5.01.