



Town of Brookline Massachusetts

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PLANNING BOARD

Steve Heikin, Chair
James Carr
Linda K. Hamlin
Blair Hines
Matthew Oudens
Mark J. Zarrillo

BROOKLINE PLANNING BOARD MINUTES By Zoom Event April 1, 2021 – 7:00 p.m.

Board Present: Steve Heikin, Linda Hamlin, James Carr, Mark Zarrillo, Matthew Oudens, and Blair Hines

Staff Present: Victor Panak, Maria Morelli, Virginia Bullock

Steve Heikin opened the meeting.

PUBLIC HEARING ON PROPOSED ZONING AMENDMENT WARRANT ARTICLES FOR SPRING 2021 TOWN MEETING

ARTICLE 23 – AMEND SEC. 4.08 OF THE ZONING BY-LAW RELATED TO AFFORDABLE HOUSING REQUIREMENTS (Blood)

Roger Blood (petitioner) provided a brief presentation of the proposed warrant article. Mr. Blood noted that the article was proposed by the entire Housing Advisory Board.

Mr. Heikin called on Virginia Bullock to present the Planning Department's report. Ms. Bullock expressed that the Planning Department supports the passage of this warrant article in that it would ensure that, once the Town reaches the required 10% affordable housing threshold, the requirements of the By-law are realigned to best serve the housing needs of the community.

Mr. Heikin expressed support for the article and the adjustment to income levels for affordable housing units.

Linda Olson Pehlke, 48 Brown Street, asked about the 120% income level for homeownership units and her understanding that they would not qualify for the SHI. Virginia Bullock confirmed this but noted that the Affordable Housing requirements of the By-law are the only mechanism available to encourage middle-income housing.

Mr. Heikin moved to recommend favorable action on Article 23. Ms. Hamlin seconded the motion. The motion passed 5-0-1.

ARTICLE 20 – AMEND THE ZONING BY-LAW TO CONFORM TO AMENDED STATE REGULATIONS ON MARIJUANA COURIERS AND DELIVERY OPERATORS (Planning and Community Development Department)

Maria Morelli (Planning Department, petitioner) presented the proposed Warrant Article 20. Ms. Morelli reviewed some of the edits to the warrant article requested by other Town boards/committees.

Mr. Heikin agreed with the elimination of the requirement for an enclosed loading area as recommended by the Zoning By-law Committee.

The Board discussed how the proposed new regulations might impact the operations of existing marijuana retailers.

Ms. Hamlin wondered whether some of the requirements applied to marijuana retailers are unnecessary and unfair and potentially serve to stigmatize the use.

There was no public comment.

Mr. Heikin moved to recommend favorable action on Article 20 as amended by previous committees. Mr. Zarrillo seconded the motion. The motion passed 6-0-0.

ARTICLE 25 – AMEND SEC 5.06 AND 2.06 OF THE ZONING BY-LAW TO REQUIRE NEW BUILDINGS IN THE EMERALD ISLAND SPECIAL DISTRICT TO BE FOSSIL FUEL FREE
(Scanlon et. al)

Kathleen Scanlon (petitioner) provided the Board with a presentation on the proposed Warrant Article 25.

Mr. Heikin called on Maria Morelli to present the Planning Department’s report. Ms. Morelli said that the approach of tying fossil-fuel-free requirements to overlay districts is supported and recommended by the Planning Department but that fossil-fuel-free requirements must be coupled with energy-efficiency requirements.

Paul Saner (co-petitioner) noted that any property owner who could assemble the parcels necessary to meet the minimum area requirements for the Emerald Island Special District (EISD) would inevitably properly insulate their building to ensure operational cost parity of a fossil-fuel-free building. Mr. Saner also noted that any legal issues with the article had already been vetted with Town Counsel. Mr. Saner also indicated that proper property owner outreach had been done by the petitioners. Mr. Saner felt that a referral of the article was not necessary because all of the reasons stated by the Planning Department for referral were already resolved.

Mr. Hines expressed support for this warrant article, saying that although it is not perfect, it is worth pursuing at this time.

Mr. Zarrillo also expressed support for this warrant article, feeling that any zoning issues he might previously noticed have been resolved.

Ms. Hamlin also expressed support for this warrant article.

Mr. Carr also expressed support for this warrant article. He emphasized that it may be important for the Town to improve its understanding of the electrical grid and what capacity it has.

Mr. Oudens stated that he is supportive of warrant article 25.

Linda Olson Pehlke, 48 Brown Street, said she supports the position put forth by the Planning Department’s report. Ms. Pehlke also emphasized that the Emerald Island Special District was drafted after several months of negotiation and discussion by a dedicated Committee and that she is reluctant to modify the outcome of that Committee’s work.

Mr. Heikin also expressed support and said that he believes passing this article is an important proof-of-concept.

Mr. Heikin moved to recommend favorable action on Article 25. Mr. Zarrillo seconded the motion. The Board voted 6-0 to support the motion.

ARTICLE 26 – AMEND THE ZONING BY-LAW TO INCENTIVIZE FOSSIL FUEL FREE INFRASTRUCTURE IN NEW CONSTRUCTION AND SIGNIFICANT REHABILITATION OF BUILDINGS BY SPECIAL PERMIT (Cunnigham et. al)

Jesse Gray (petitioner) provided the Board with a presentation of the proposed Warrant Article 26.

Mr. Heikin called on Victor Panak (Planning Department) to present the Planning Department’s report. Mr. Panak summarized the main concerns of the Planning Department related to scope, equity, administration and enforcement, financing, and incentives v. mandates.

Mr. Zarrillo felt that most people did not understand how this article would operate within the framework of zoning laws. Mr. Zarrillo felt that the article included a number of flaws, including that provisions of articles could be viewed as takings and that expiring permits would be dysfunctional. Mr. Zarrillo felt that the article included loopholes and ways for applicants to game the system. He suggested that the Town wait for state law to mandate fossil-fuel-free buildings. Mr. Zarrillo stated he would vote against the article.

Mr. Heikin responded that the state may take quite a bit longer to pass a more progressive building code (minimum of 18 months) than people expect. He believes the Town shouldn’t wait for the state to act, believing it may take 2-3 years. Mr. Heikin asked the petitioners to explain why the expiring permit mechanisms is appropriate in this case.

Ray Miyares (petitioner) explained the reasoning and mechanism of expiring special permits.

Mr. Heikin explained why he believes that the article represents a “nudge”, “stick”, and “carrot” all in one. He suggested that the question of whether the article would be approved by the Attorney General is not necessarily relevant at this stage. He also emphasized how strongly Town Meeting supported Article 21 in 2019.

Ms. Hamlin expressed opposition to the methodology and felt that the article did not act as an incentive. She said she is worried about the Attorney General’s review. She also felt that the article was a misuse of the special permit application.

Lisa Cunningham (petitioner) emphasized that the Town and State need to find a mechanism to completely stop any new fossil-fuel buildings. She also stated that she, as an architect, goes through the special permitting process regularly and understands the process. She feels that the article is not particularly complicated, and architects and lawyers would understand it very well.

Mr. Oudens clarified that if an applicant is not replacing the heating, they do not need to comply with the article. Ms. Cunningham confirmed this.

There was additional discussion between Board members and the petitioner regarding when the requirements of the article would be triggered, especially as it relates to the 75% renovation threshold and the replacement of heating systems.

Mr. Carr said that he realized that his frustration with the article actually stemmed from frustrations with the Town's regulatory structure more generally. Having recognized that, he felt that the article would be effective at its goal of reducing the number of fossil-fuel buildings and that he was therefore prepared to support the article.

Public Comments

Scott Englander, Pct. 6, expressed support for the article, emphasizing its urgency within the context of climate change and the Town's need to convert its building stock to be fossil-fuel-free.

Linda Olson Pehlke, 48 Brown Street, expressed opposition to the article, feeling that application of the process would be dysfunctional and detrimental to the Town's ability to enforce decisions and provision of the Zoning By-law. She also suggested that the new State building code would be issued sooner than suggested by Mr. Heikin and that the Town should work with that timeline. She emphasized that the Town Meeting is not equipped to understand the article and that residents should read the Planning Department report to understand it.

Paul Saner expressed opposition to the article primarily on the grounds that the article would have undesirable impacts on renovations to small residential dwellings. He also suggested that the effective date should be pushed back.

Mr. Hines was not sure about the article but stated he took Mr. Saner's concerns seriously.

Board members discussed whether the discussion should be continued to a later meeting or whether the Board should take a vote right away.

Ms. Hamlin asked Jonathan Simpson (Town Counsel) whether the article acts as an incentive. Mr. Simpson stated that the incentive nature of the article is not dispositive as to whether the article would pass the approval of the Attorney General. Mr. Simpson stated that he believes the article could be characterized as an incentive – a case could be made in court that it acts as one.

The Board agreed to continue the discussion to their next meeting.

The meeting was adjourned.