

**Redline of MUOD Zoning Bylaw Section
with Proposed Amendments as of April 30, 2010**

9.6 MIXED USE OVERLAY DISTRICT (MUOD)

9.6.1 **Purpose.** The purpose of the Mixed Use Overlay District (MUOD) is as follows:

9.6.1.1 to encourage the development of comprehensive projects of appropriate scale in an area that provides proximate access to major highway and public transportation;

9.6.1.2 to provide a desirable mix of land uses, including both residential and nonresidential development that will serve Town and regional interests in housing, employment, conservation and net tax revenue;

9.6.1.3 to promote creative, efficient and appropriate solutions to the development of complex sites.

9.6.2 **Location.** MUOD 1, MUOD 2 and MUOD 3 are herein established as overlay districts. The MUODs shall include the areas as shown on the Zoning Map.

9.6.3 **Applicability.** Except as otherwise provided herein, the provisions of this Section shall apply to MUOD 1, MUOD 2 and MUOD 3.

9.6.3.1 **Area Master Plan.** A project in a MUOD may be authorized by special permit for an Area Master Plan encompassing any parcel or set of parcels held in common or separate ownership which have an aggregate land area of fifty (50) acres or more and are located in one or more MUODs. All parcels in the Area Master Plan shall be referred to collectively as a single “Area Master Plan Lot.” Any area within an Area Master Plan Lot, whether held in single or multiple ownership, may be designated as a “Sub-Area Master Plan Lot” by the Planning Board. If ~~the an~~ application ~~for development~~ under MUOD provisions involves more than one ownership, each owner of land included in the Area Master Plan shall be a party to, or consent to, the application ~~and upon approval of the application, subject to its provisions.~~

9.6.3.2 **Separation of Lots and Phases.** Notwithstanding any provision of this Bylaw or any permit issued hereunder to the contrary:

9.6.3.2.1 Any individual Area Master Plan or Sub-Area Master Plan may consist of one or more phases and/or one or more uses.

9.6.3.2.2 Any violation of this Bylaw or any permit issued hereunder by an owner or occupant of a single lot or ownership unit or demised premises within an Area Master Plan Lot or a Sub-Area Master Plan Lot shall not constitute a violation by any

other owner or occupant within the same or any other Area Master Plan Lot or Sub-Area Master Plan Lot.

9.6.3.2.3 The requirements of this Bylaw shall not be applied to the individual lots or ownership units comprising an Area Master Plan Lot or Sub-Area Master Plan Lot, but shall be applied as if the Area Master Plan Lot or Sub-Area Master Plan Lot, as applicable, were a single conforming lot whether or not the same is in single or multiple ownership.

9.6.3.2.4 Upon the issuance of an EIDR approval under this Bylaw for any phase of an Area Master Plan, such phase shall be deemed to be in compliance with the provisions of this Bylaw notwithstanding the status of any other phase in the Area Master Plan and/or any noncompliance of such other phase with the phasing plan, phasing requirements set forth herein or otherwise.

9.6.4 **Special Permit Required.** Development under MUOD provisions requires special permit approval of an Area Master Plan by the Planning Board in compliance with the provisions of this Section. Application for any special permits which may otherwise be required pursuant to this Bylaw, except for the special permit required under Section 8.7, Residential Retirement Community and Section 9.3, Water Resource Protection Overlay District, may be consolidated into a MUOD Area Master Plan special permit application. Such consolidated special permit application may be acted upon by the Planning Board in accordance with the requirements of Section 9.6.12 by issuance of an Area Master Plan special permit, regardless of which board is designated as the Special Permit Granting Authority in the applicable sections of this Bylaw. Special permits pursuant to Section 5.5.6, Creation of Ways, Section 6.3.2 Buffer Areas in Nonresidential Districts, Section 6.5, Floor Area Ratio Limitation, Section 7.2, Major Business Development (MBD), Section 8.5, Major Residential Development (MRD) and Section 8.6, Senior Residential Development (SRD) shall not be required for development under a MUOD Area Master Plan.

9.6.5 **Permitted Uses.** Subject to the provisions of this Bylaw applicable to the underlying district, unless otherwise provided herein, land and buildings within a MUOD may be used for any purpose permitted as of right or by special permit in the underlying district. Multiple uses may be contained within a single building or structure. The following uses may be included within an Area Master Plan in addition to the uses allowed in the underlying district pursuant to Section 4.0, Use Regulations:

9.6.5.1 Commercial outdoor recreation;

9.6.5.2 Hotel on less than five (5) acres;

9.6.5.3 Non-exempt educational use;

9.6.5.4 Parking garage as a principal use;

- 9.6.5.5 In MUOD 2 and MUOD 3 only, multi-family dwelling consisting solely of residential condominiums;
- 9.6.5.6 ~~In MUOD 2 and MUOD 3 only, establishments selling fast order food establishment, provided either: (a) such establishment is within MUOD 1, and is located east or south of Westwood Station Boulevard, or (b) such establishment is wholly within a building in office or other non-retail use, or (c) such establishment is located within MUOD 2 or MUOD 3. For the purpose of this subsection, the location of Westwood Station Boulevard is that shown on the approved Definitive Subdivision Plan for Westwood Station, entitled “Westwood Station’ MP Special Permit Definitive Subdivision Plan of Land in Westwood, MA”, dated October 1, 2007, and revised through December 27, 2007, prepared by Traffic Solutions, LLC, Two Center Plaza, Suite 700, Boston, MA 02108, approved by the Planning Board on January 8, 2008 and recorded in the Norfolk County Registry of Deeds on April 18, 2008;~~
- 9.6.5.8 Shuttle Service System, which shall mean the operation of buses or similar motor vehicles designed for the transport of groups of people, together with the following facilities: a covered garage for parking shuttle vehicles, shelters at shuttle stops, and maintenance facilities, provided that, if a maintenance facility is located within the Water Resource Protection Overlay District, only those maintenance or repair services shall be allowed as are reviewed and approved by the Planning Board in an Area Master Plan Special Permit and conditioned in a manner that serves the purposes of the Water Resource Protection Overlay District, and provided further that in no event shall maintenance and repair services in the Water Resource Protection Overlay District include the changing of motor oil, or the use or storage of any petroleum product, or the refueling of vehicles with any oil or hazardous material as defined in M.G.L. c. 21E.
- 9.6.5.11 Restaurant with Entertainment, provided that ~~(1)~~ (a) the Restaurant with Entertainment is part of an Area Master Plan that includes at least ~~500,000~~ 300,000 square feet of Retail Sales and Services uses in the aggregate; ~~(2)~~ (b) the Entertainment is at all times subordinate and incidental to the Restaurant use; and ~~(3)~~ (c) the Entertainment takes place while the Restaurant is offering meal service. For purposes of this Section, Entertainment shall be defined within the MUOD as the provision of live, recorded, or interactive music, comedy, vocals, drama or media or other entertainment licensed by the Town but shall not include Adult Use;
- 9.6.5.12 Uses accessory to the uses cited above and to the uses permitted in the underlying zoning district, irrespective of whether such uses are located on the same lot as the principal uses, provided that the principal use to which each such use is accessory must be clearly identified, and provided further that any use or building that is accessory to principal uses must be reviewed and approved by the Planning Board in an Area Master Plan Special Permit.

9.6.6 Use Limitations.

- 9.6.6.1 The following uses are prohibited within an Area Master Plan: motor vehicle sales and rentals; motor vehicle general and body repairs; motor vehicle light service and self-storage or mini-storage facilities.
- 9.6.6.2 Warehouse and wholesale or distribution facilities are allowed within an Area Master Plan only as an alteration or expansion of an existing facility.

9.6.7 **Alternative Regulations.** The following alternative regulations may be used for a project in the MUOD rather than the regulations applicable to the underlying district as provided in Section 5.2, Table of Dimensional Requirements, Section 5.4, Height Regulations, Section 5.5.4, Corner Clearance, Section 5.5.5 Uses within Setbacks, Section 6.3.2, Buffer Areas in Nonresidential Districts and Section 6.5, Floor Area Ratio Limitation:

- 9.6.7.1 The aggregate floor area ratio within MUOD 1 and MUOD 2, exclusive of MUOD 3, shall not exceed 1.0. The aggregate floor area ratio within MUOD 3 shall not exceed 1.2, except that for any Area Master Plan that includes lots within MUOD 2 and MUOD 3, the aggregate floor area ratio for all lots within MUOD 2 and MUOD 3 of said Area Master Plan shall not exceed 1.1. The floor area ratio on individual lots within an Area Master Plan may exceed the MUOD district limit provided that the aggregate floor area ratio of each MUOD within the Area Master Plan, or the aggregate floor area ratio of combined MUODs within the Area Master Plan, shall not exceed the aggregate maximum limits of the MUODs, each or combined, within the Area Master Plan, as specified herein.
- 9.6.7.2 There shall be no minimum setback or corner clearance requirements and retail use, restaurant and other types of seating may be allowed within setbacks and not be subject to Section 6.3.1, Enclosure Requirements in Highway Business and Industrial Districts.
- 9.6.7.3 There shall be no minimum lot width, lot frontage, lot area, nonwetland area or maximum building coverage requirements.
- 9.6.7.4 The maximum impervious surface requirements shall be met across the aggregate of: (a) all land ~~in lots and Open Public Amenity Areas~~ within the Area Master Plan Lot, and (b) land outside the Area Master Plan Lot, but within an MUOD, that is subject to a recorded easement, restriction or covenant or other appropriate instrument, but do not have to be met on each individual lot.
- 9.6.7.5 The maximum building/structure height in MUOD 2 shall be seventy (70) feet and a maximum of six (6) stories, provided that the height shall not in any case exceed one hundred seventy-eight and one-half (178½) feet above sea level. The maximum building/structure height in MUOD 3 shall be one hundred twenty (120) feet but in no case shall exceed one

hundred seventy-eight and one-half (178½) feet above sea level. All unoccupied mechanical features pursuant to Section 9.6.7.6 shall be included in the calculation of building/structure height over seventy (70) feet in MUOD 3. Any additional building/structure height over seventy (70) feet which is allowed in MUOD 3 shall be designed to relate harmoniously to the terrain and to the use, scale and architecture of existing buildings and to mitigate the visual impacts on surrounding non-industrial uses. The project proposal shall incorporate aesthetically-conscious design which promotes environmentally compatible uses, pervious surfaces and landscaped areas in exchange for the additional building/structure height.

9.6.7.6 Unoccupied mechanical features such as chimneys, ventilators, skylights, tanks, bulkheads, penthouses, amateur radio antennae and other necessary features usually carried above the roof line and which are exempted from the limitations on building/structure height may cover up to eighty percent (80%) of the roof area of the building or structure provided that no such features exceed one hundred seventy-eight and one-half (178½) feet above sea level.

9.6.7.7 Where a lot in the MUOD abuts or is within twenty (20) feet of the boundary line of any Residential District, a buffer area shall be provided on all portions of said lot so abutting that shall have a minimum width of fifty (50) feet. Said buffer area shall be used exclusively as a planting area so as to create a substantially sight impervious screen.

9.6.8 **Residential Controls.**

9.6.8.1 A minimum of two hundred (200) housing units shall be included in any Area Master Plan which includes any housing.

9.6.8.2 Pre-existing and new housing units shall occupy no more than one-third (1/3) of the total gross floor area at the completion of the build-out of the Area Master Plan.

9.6.8.3 The gross floor area contained within housing units granted occupancy permits pursuant to the Area Master Plan shall not exceed the gross nonresidential floor area granted occupancy permits pursuant to said Area Master Plan at any stage in the development process.

9.6.8.4 Housing affordability shall be provided for as follows:

9.6.8.4.1 A minimum of twelve percent (12%) of the housing units in the Area Master Plan shall be “affordable” as defined in this Bylaw, unless the Planning Board determines a proposed alternative to be at least equivalent in serving the Town’s housing needs.

- 9.6.8.4.2 An additional five percent (5%) of the housing units in the Area Master Plan shall be either “affordable” or “moderate income” as defined in this Bylaw, unless the Planning Board determines a proposed alternative to be at least equivalent in serving the Town’s housing needs.
- 9.6.8.4.3 A fee as stipulated in the Area Master Plan approval shall be paid by the Applicant to cover the ongoing costs of administering the affordability requirements.
- 9.6.8.4.4 Except as provided in this Section, no additional housing affordability mandates pursuant to this Bylaw shall apply to development authorized under an Area Master Plan.
- 9.6.8.4.5 The Planning Board may adopt and from time to time amend regulations to assure that the affordable and moderate income housing units are developed concurrent with and are visually indistinguishable (except for unit size) from the market-rate housing units, for processes for local preference and other aspects of occupant household selection, and for means of assuring price levels for affordable and moderate income units in perpetuity.

9.6.9 **Conditions.** The following conditions shall apply in MUODs:

9.6.9.1 **Parking Requirements.** Requirements to assure parking adequacy are to be established in the Area Master Plan, which ~~may~~ shall depart from the provisions of Section 6.1, Off-Street Parking in the following ways:

9.6.9.1.1 A special permit to reduce the number of required parking spaces pursuant to Sections 6.1.8 and 6.1.10 may be consolidated into a MUOD Area Master Plan special permit application and acted upon by issuance of an Area Master Plan Special Permit by the Planning Board, to be implemented on a phase by phase basis. The obligations to reserve space for the reduced parking and to limit development to that which would be feasible absent a special permit for parking reduction may not apply, provided that adequacy of the reduced number shall be monitored in the initial phase of the development and authorization for future phases shall be based upon adequacy of that performance.

9.6.9.1.2 Parking requirements (actual or reserved) for any phase of an Area Master Plan, once approved by the Planning Board under EIDR, shall not be subject to modification; provided, however, additional parking spaces shall be required for a change in use or intensity that increases the parking requirements as set forth in Section 6.1.2.

- 9.6.9.1.~~23~~ Shared joint off-street parking spaces, which include parking garages, may be located on contiguous lots or on lots that are within eight hundred (800) feet walking distance of the building entrance to be served.
- 9.6.9.1.~~34~~ There shall be no minimum parking setback requirements as required in Section 6.1.18 except at any boundary line at the perimeter of an Area Master Plan, other than where it abuts another Area Master Plan, unless such minimum parking setback requirement is waived by the Planning Board in its discretion.
- 9.6.9.1.~~45~~ Parking shall preferably be structured, ~~but in no event and shall not~~ be primarily located so that it separates buildings from street sidewalks. Parking shall instead be primarily located below the building, to its rear, or to its side. The foregoing provisions shall not apply to (a) any portion of an Area Master Plan Lot that is located outside the 1,500-foot zone surrounding the main pedestrian entrance to the depot building at the Massachusetts Bay Transportation Authority's University Park/Route 128 Station (the "Station Zone"), or (b) any portion of an Area Master Plan where strict enforcement of such provisions would inhibit the purpose and intent of Section 9.6 as the Planning Board may determine in its discretion.
- 9.6.9.1.~~56~~ In an Area Master Plan, ~~the Planning Board may vary the requirements of Section 6.1.23 to allow for access or egress points to a parking area to be closer than one hundred fifty (150) feet to the centerline of an intersecting street and to allow for more than two (2) access and two (2) egress points to any one parking area shall not apply.~~
- 9.6.9.1.~~67~~ In an MUOD Area Master Plan Special Permit, the Planning Board may approve, in lieu of the requirements of Section 6.1.17, such landscaping requirements as the Planning Board determines are appropriate in light of the type of parking facility and the parking or loading area location and relationship to nearby buildings, which landscaping may be shown on plans included in an Area Master Plan Special Permit but, in all events, must be reviewed and approved pursuant to Environmental Impact and Design Review under Section 7.3.

9.6.9.2 **Water Resource Protection District.** The requirements of Section 9.3, Water Resource Protection Overlay District (WRPOD), shall apply within areas subject to both the WRPOD and the MUOD, except as follows:

- 9.6.9.2.1 For purposes of Section 9.3.4, the reference to uses for any purpose by special permit in the underlying district shall also refer to uses for any purpose by special permit in the MUOD.
- 9.6.9.2.2 Petroleum products in the fuel tanks of vehicles within parking structures within the MUOD shall not be considered storage of liquid petroleum products.
- 9.6.9.2.3 Within the MUOD, minimum lot area shall be consistent with Section 9.6.7.3.
- 9.6.9.2.4 For purposes of ~~calculating~~ providing the minimum amount of vegetation area and the amount of impervious materials coverage in Section 9.3.7.3, ~~the references to “lot” shall be deemed to be to~~ the following shall apply: Vegetation may be provided within the area subject to an Area Master Plan Special Permit or application therefor and/or areas outside the Area Master Plan/Application, but within an MUOD, that are subject to a recorded easement, restriction or covenant or other appropriate instrument. If an Area Master Plan includes areas within both the MUOD and WRPOD, and if impervious materials cover more than fifteen percent (15%) of the portion of such area within the WRPOD, then all storm drainage other than roadway runoff, and as allowed by the Department of Environmental Protection (DEP), parking lot runoff, shall be recharged within the area subject to the Area Master Plan and roadway and such parking lot runoff shall comply with the stormwater management standards adopted by the Massachusetts Department of Environmental Protection.
- 9.6.9.2.5 Within the MUOD, the phrase “on-site” as used in Section 7.3.8.7 and Section 9.3, Water Resource Protection Overlay District (WRPOD), shall refer to land in lots subject to an MUOD Area Master Plan Special Permit, so that (1) the requirements for the recharge of storm drainage may be met across the aggregate of all land in lots within the Area Master Plan, but do not have to be met on each individual lot; and (2) the requirements for wastewater disposal may be met through a privately-operated wastewater treatment facility serving some or all lots within the Area Master Plan provided that the facility is constructed, approved and operated in accordance with all applicable federal, state, and local laws.
- 9.6.9.2.6 For purposes of Section 9.3.7.6, with respect to the land in lots subject to an MUOD Area Master Plan Special Permit, uses requiring wastewater disposal may be connected to a

private wastewater treatment facility, if constructed, approved, and operated in accordance with all applicable federal, state, and local laws.

9.6.9.3 **Open Public Amenity Areas.** Not less than ten percent (10%) of the aggregate land area, exclusive of wetlands, contained within the Area Master Plan must be comprised of areas to which the public has at least visual access, including landscaped areas and such features as pedestrian walks, patios, landscaped plazas, and incidental structures to support them, but excluding auto traveled ways, driveways and parking surfaces. The foregoing requirement may be satisfied within the Area Master Plan Lot or outside the Area Master Plan Lot on land in an MUOD that is subject to a recorded easement, restriction or covenant or other appropriate instrument. An initial determination of whether a particular area or feature meets this requirement shall be made by the Planning Board in its decision on the Area Master Plan and a definitive decision shall be made pursuant to the review of individual projects within an Area Master Plan under Section 7.3, Environmental Impact and Design Review.

9.6.9.4 **Sign Locations.** Signs may be set back less than the fifteen (15) feet from the street line ~~as required in Section 6.2.5.~~ Signs or sign structures may project or extend over sidewalks only, private ways or, with the approval of the Board of Selectmen, public ways.

9.6.9.5 **Signs.** Notwithstanding the requirements of Section 6.2 of this Bylaw, the Planning Board may through the Environmental Impact and Design Review process under Section 7.3 of this Bylaw approve the erection and maintenance of such signs that (a) are located within the boundaries of, or relate to, a project for which an MUOD Area Master Plan ~~S~~special ~~P~~permit has been issued under Section 9.6.4 of this Bylaw, and (b) comply with signage guidelines approved by the Planning Board in connection with the issuance of such Area Master Plan ~~S~~special ~~P~~permit and with the conditions of any consolidated special permit issued as part of such Area Master Plan ~~S~~special ~~P~~permit pursuant to Sections 9.6.4 and 6.2.17 of this Bylaw. The provisions of Section 6.2 of this Bylaw shall apply to signs erected and maintained other than in accordance with an Area Master Plan ~~S~~special ~~P~~permit that establishes signage guidelines. Off-Premises Signs shall be permitted within the Area Master Plan Lot or elsewhere in the MUOD provided an appropriate license, recorded easement or other appropriate arrangement is implemented. In no event shall any off-premises sign exceed the maximum sign area applicable to an on-premises sign within the Area Master Plan Lot.

9.6.10 **Area Master Plan Requirements.** Application for a special permit for approval of a MUOD Area Master Plan shall be accompanied by the following and all other application materials required by rules and regulations to be adopted by the Planning Board for administration of these provisions.

- 9.6.10.1 Narrative, tabular and graphic description of existing conditions in the MUOD and, in a general manner, in adjoining areas.
- 9.6.10.2 Narrative, tabular and graphic description of the proposal, including:
- 9.6.10.2.1 schematic development plans, indicating boundaries of the Area Master Plan, buildings, vehicular and pedestrian circulation, parking, reserved open public amenity areas, topography, areas of retained vegetation and areas proposed for landscaping, and division of land into lots;
 - 9.6.10.2.2 schematic infrastructure plan, indicating utilities and stormwater management provisions;
 - 9.6.10.2.3 materials indicating the proposed ultimate floor area in each use in each phase;
 - 9.6.10.2.4 tabulation of the number of housing units proposed by phase, categorized by building type (multi-family, attached single-family, etc.), bedroom type (studio, one-bedroom, etc.), floor area in each type of housing unit and affordability provisions;
 - 9.6.10.2.5 service improvements, such as off-site street and intersection improvements, or other capital improvements proposed to be made at the expense of the Applicant and those anticipated at public expense, and if public, the anticipated source (e.g. District Improvement Financing (DIF), Tax Increment Financing (TIF), State grants);
 - 9.6.10.2.6 description of the proposed transportation demand management (TDM) program identifying commitments, to a designated TDM manager, employer contributions to employee public transportation passes, shuttle bus capital contribution, car pool, van pool, guaranteed ride home, flex hours, promotional programs and similar efforts, the anticipated automotive trip generation reductions resulting from the TDM program and the means of making change if these reductions are not realized.
- 9.6.10.3 Analysis indicating how the project serves jobs, housing, taxes, services, environmental concerns including groundwater quality and quantity, community image and other interests of Town residents.
- 9.6.10.4 Impact analyses of appropriate issues as may be identified by the Town, including identification of public facility improvements to be made by the Applicant or by others, including:

- 9.6.10.4.1 Analysis of access demands by category of use and project phase indicating total person trip generation, modal split among automotive and other modes, distribution of trips by mode and destination, allocation of trips to specific major roadways, commuter rail and other elements of the transportation system, and anticipated ability of those elements to accommodate the demand. All information shall include data for morning and afternoon peak hours, weekend peak hours, average daily data and peak holiday/season use;
 - 9.6.10.4.2 School enrollment by primary, middle and high school level and anticipated ability of existing or committed facilities to accommodate the demand;
 - 9.6.10.4.3 A water budget analysis for affected sub-basins, analyzing net flows as a result of inflows (septic or other recharge, stormwater discharges) and outflows (surface water diversions, groundwater withdrawals, sewer flows leaving the sub-basin, other consumptive uses), shown for the current condition and for the post-development condition, reflecting proposed mitigations;
 - 9.6.10.4.4 A water quality analysis for potentially affected public water wellhead recharge areas, indicating projected change in contaminant levels resulting from full development of the Area Master Plan and its proposed mitigations.
- 9.6.10.5 Description of project timing and phasing of development and mitigations into three or more phases, depending upon project scale and length of anticipated build-out, which may not exceed ten (10) years from the grant of the Area Master Plan special permit. As provided in M.G.L. Chapter 40A, Section 9, the special permit approval of such Area Master Plan, including the consolidated special permit approvals therein, shall expire two (2) years from the date of approval unless construction or substantial use of such Area Master Plan has commenced (except for good cause), meaning in this context that construction must begin on at least one building and the phasing schedule must be adhered to thereafter provided that such two (2)-year period shall not include such time required to pursue or await the determination of an appeal referred to in M.G.L. Chapter 40A, Section 17.
- 9.6.10.6 Description of proposed methods for monitoring impacts of each phase of development and means of making change in later phases if earlier phases have traffic, school enrollment, groundwater water quality or quantity, or other impacts substantially departing from those in the projections upon which the Planning Board relied on in its approval of the Area Master Plan special permit, but only to the extent attributable to development pursuant to such Area Master Plan special permit.

9.6.10.7 Graphic visualization materials conveying the nature and character of the proposed development, and its relationship to nearby surroundings, whether through models, perspective drawings, digital simulations or other means.

9.6.10.8 A land division plan showing the division of land into lots, and incorporating a tabulation indicating for each lot and totaled for the Area Master Plan:

9.6.10.8.1 Lot area;

9.6.10.8.2 Existing and proposed maximum gross floor area, divided among residential, retail service and other uses;

9.6.10.8.3 Maximum proposed housing units;

9.6.10.8.4 Maximum proposed impervious surface;

9.6.10.8.5 Minimum proposed Open Public Amenity Area.

The owner of a lot within an Area Master Plan Lot shall be entitled to lawfully divide such lot, including without limitation plans approved pursuant to Massachusetts General Laws Chapter 41, Section 81P, without modifying the applicable Area Master Plan Special Permit, EIDR Approval or other approval under this Bylaw, consistent with the provisions of this Section 9.6. Lots within an Area Master Plan Lot or Sub-Area Master Plan Lot may be separated by a public or private way.

9.6.11 Authorization of First Phase. At the request of the Applicant, the Planning Board may authorize the first phase (“Phase I”) of a project pursuant to an Area Master Plan special permit as follows:

9.6.11.1 Except as provided in this Section 9.6.11, all requirements of Section 9.6 shall apply to Phase I, including but not limited to the information required under Section 9.6.10, Area Master Plan Requirements and Section 9.6.13.1, Environmental Impact and Design Review.

9.6.11.2 Phase I shall include only nonresidential uses. Residential uses shall not be authorized except in accordance with a special permit for the entire Area Master Plan.

9.6.11.3 Phase I shall not exceed more than twenty-five percent (25%) of the approximate total gross floor area of the Area Master Plan.

9.6.11.4 In conjunction with the submittal of an application for a Phase I special permit, the Applicant shall also submit a plan for the future development of the balance of the Area Master Plan (“Future Development Plan”). The

Future Development Plan shall include information regarding the location of all parcels that will be subject to the Area Master Plan, the approximate total gross floor area of the Area Master Plan project, projected uses, projected infrastructure improvements, projected public amenities, projected project timing and phasing of development and such other information regarding the balance of the Area Master Plan as the Planning Board may require.

9.6.11.5 The Applicant shall submit an application for an Area Master Plan special permit for the entire project to the Planning Board within six (6) months following approval of Phase I. The Planning Board may extend this deadline by an additional six (6) months upon a demonstration by the Applicant that good cause exists for such extension.

9.6.11.6 The Planning Board shall grant a special permit for Phase I of an Area Master Plan and any other special permits consolidated therein pursuant to Section 9.6.4 for Phase I only upon its written determination that Phase I is consistent with the Decision criteria set forth in Section 9.6.12. The Phase I special permit shall be incorporated by reference and made part of the full Area Master Plan special permit.

9.6.11.7 No building, structure or other improvements outside of Phase I shall commence until the special permit for the entire Area Master Plan has been granted.

9.6.12 **Decision.** A special permit for an Area Master Plan and any other special permits consolidated therein pursuant to Section 9.6.4 shall be granted by the Planning Board only upon its written determination that the beneficial effects of implementing the proposed Area Master Plan will outweigh any adverse impacts on the Town or the neighborhood, in view of the particular characteristics of the site, and of the project in relation to that site, and that the uses allowed are in harmony with the general purpose and intent of this Bylaw. If multi-family use is included in the application, the Planning Board shall also determine that the public good will be served after a finding that the underlying zoning district is not adversely affected by multi-family use and that uses permitted in such district are not noxious to multi-family use. In addition to any specific factors that may be set forth elsewhere in this Bylaw, the determination shall include consideration of each of the following:

9.6.12.1 ability of transportation, utilities, schools and other public facilities, and other public infrastructure as existing, or as committed by the Town or the Applicant to be improved, to serve the project adequately and safely without material deterioration in service to other locations;

9.6.12.2 degree to which the project will increase the economic value of the site, generate employment opportunities and generate sustaining economic benefit to the Town;

9.6.12.3 degree to which the project is consistent with the principles of transit-oriented development, including higher density, mix of uses, pedestrian-

oriented design, connectivity, mix of transportation choices and reduction in automotive use;

- 9.6.12.4 extent to which the project will serve identified housing needs of the Town and the region;
- 9.6.12.5 extent to which the project can restore any degraded environmental resources, including groundwater, waterways and contaminated soils;
- 9.6.12.6 ability of the project to assure design integration among adjoining sites within the Area Master Plan and elsewhere within the MUOD and to assure compatibility with adjoining sites outside of the MUOD, including architectural compatibility, roadway alignments and pedestrian access;
- 9.6.12.7 degree to which the project provides for effective flood mitigation and stormwater storage and other mitigation measures for the site and proximate residential properties and the degree to which the project protects sub-basin groundwater volume and quality;
- 9.6.12.8 degree to which the project provides for buffering and screening from nearby residential properties.

9.6.13 **Conditions General Provisions.**

9.6.13.1 **Environmental Impact and Design Review.** Approval of an Area Master Plan does not substitute for the otherwise required review of individual buildings pursuant to Section 7.3, Environmental Impact and Design Review, except as expressly hereinafter provided. To the extent that a building's impacts, mitigation and features are approved as part of the Area Master Plan, such impacts, mitigation and features shall be reviewed for general consistency with the Area Master Plan Special Permit, subject to the provisions of Section 9.6.10.6. Consistency with the Area Master Plan Special Permit shall be a requirement consideration in the Section 7.3 review of individual building applications; ~~except for minor departures, as determined by the Planning Board.~~ The following will ~~not be considered to be "minor" departures and will~~ require a special permit amendment to the Area Master Plan:

- 9.6.13.1.1 A proposed amount of development exceeding the amount authorized for that category of use cumulatively through that phase in the Area Master Plan;
- 9.6.13.1.2 An unmitigated increase beyond the explicit impact limitations established in the Area Master Plan;
- 9.6.13.1.3 Failure to make provision for impact mitigations required in the Area Master Plan;

9.6.13.1.4 Substantial departure from the configuration of building forms and access patterns indicated in the Area Master Plan; or

9.6.13.1.5 Other departures whose impacts because of their scale, severity or kind would be of substantial public consequence.

9.6.13.2 The EIDR decision shall authorize administrative approval of minor plan modifications meeting the criteria set forth in the decision by the Town Planner, or other Town staff as designated in the decision, in which case no modification of the Area Master Plan Special Permit shall be required. A minor plan modification shall be limited to minor adjustments to any physical elements in an approved plan whereby there is no material increase in unmitigated impacts upon the community or the neighborhood. A plan modification, for purposes of this subsection, shall be deemed to be minor if the changes proposed:

9.6.13.2.1 Are materially consistent with the approved Area Master Plan Special Permit, Sub-Area Master Plan Special Permit or EIDR Approval from which the modification is requested;

9.6.13.2.2 Involve no material increase in building size or floor area, or material decrease in parking supply;

9.6.13.2.3 Do not materially vary from the approved layout of buildings, parking facilities, streets and access drives, utilities, and other principal site elements;

9.6.13.2.4 Do not materially change the design and operation of the stormwater system;

9.6.13.2.5 Do not materially increase vehicle trips; and

9.6.13.2.6 Do not result in any material decrease in the amount of approved landscaping, pedestrian area or open space.

9.6.13.23 **Assurance of Impact Mitigations.** Since approval of an Area Master Plan authorizes substantial increases in permissible densities of population and employment, a condition of the special permit for the Area Master Plan shall be that the project shall mitigate some or all of the impacts of those density increases on water and sewer utilities, off-site traffic circulation facilities and schools through grants and incentives obtained from other agencies or contributions at the expense of the Applicant.

9.6.13.34 **Transfer of Development Authorizations and Obligations.** Area Master Plan authorizations for building gross floor area, housing units, impervious surface and obligations for Open Public Amenity Area and

impact mitigations may be transferred between lots and between owners provided that the Planning Board, prior to endorsing a revised version of the land division plan as required in Section 9.6.10.8, determines that the transfer is consistent with the approved Area Master Plan, making no more than “minor” departures as provided for in Section 9.6.13.1.

~~9.6.13.45~~ **Reimbursement for Consultants.** It will be necessary for the Planning Board to hire consultants in connection with the review and evaluation of the Area Master Plan and of subsequent applications under Section 7.3, Environmental Impact and Design Review. The Planning Board will be reimbursed by the Applicant for the reasonable fees and expenses of such consultants, and each application for a special permit pursuant to this Section or to Section 7.3 review hereunder shall contain an agreement by the Applicant to that effect.

~~9.6.13.56~~ **Non-Regulatory Agreements.** Development under an approved Area Master Plan, in addition to compliance with provisions of this Section and other regulatory provisions, will involve memoranda of understanding or non-regulatory agreements reached among those proposing development, the Town, and possibly other entities, such as other governmental agencies. Said non-regulatory agreements shall be incorporated by reference and made part of a Phase I special permit and full Area Master Plan special permit.

~~9.6.13.7~~ **Discretionary Authority.** In connection with the approval of an Area Master Plan Special Permit, a Sub-Area Master Plan Special Permit, or an EIDR Approval, the Planning Board in its discretion may modify the application of the requirements of Section 9.6 by up to ten percent (10%). In such cases the Planning Board must find that:

9.6.13.7.1 The use is otherwise permitted in the MUOD;

9.6.13.7.2 The modification is otherwise consistent with the intent of Section 9.6; and

9.6.13.7.3 The modification has a beneficial impact on the Area Master Plan or Sub-Area Master Plan.

No modification herein shall authorize an increase in the height limitations in the MUOD.

~~9.6.13.6~~ **9.6.14 Appeal.** As the Area Master Plan special permit is appealable under applicable state law and notwithstanding Section 7.3.13, the Planning Board’s decision pursuant to Section 7.3, Environmental Impact and Design Review, of individual buildings or phases of a project subject to an Area Master Plan special permit is not appealable pursuant to M.G.L. Chapter 40A, Section 17 but only in accordance with other applicable state law.