

**TOWN OF WESTWOOD**  
Commonwealth of Massachusetts

Steven H. Olanoff, Chairman  
Steven Rafsky, Vice Chairman  
Bruce H. Montgomery, Secretary  
Robert C. Malster  
John J. Wiggin



Nora Loughnane, Town Planner  
Janice Barba, Land Use Assistant

**PLANNING BOARD**

**MEMORANDUM**

TO: Town Meeting  
FROM: Steven H. Olanoff, Chairman  
DATE: May 3, 2010  
RE: Proposed MUOD Zoning Articles

---

The WESTWOOD PLANNING BOARD held a public hearing in accordance with the provisions of M.G.L. Chapter 40A, §5 on Monday, April 26, 2010 in the Professional Development Room at Westwood High School, 220 Nahatan Street, Westwood, MA, to consider certain proposed amendments to the Town of Westwood Zoning Bylaw. Following deliberation on those proposed amendments at the April 26, 2010 Planning Board Public Hearing, further deliberation at the Finance Commission public hearing of the same date, and further deliberation at a Planning Board meeting on May 3, 2010, the majority of the Planning Board recommends that Town Meeting vote to approve the following amendments:

Article 10 sets forth a number of amendments to Section 9.6 [Mixed Use Overlay Districts (MUOD)]. Each of these amendments are proposed to clarify or modify the application of the MUOD zoning, to enable the Westwood Station project to better meet the requirements of the current economic environment.

By a vote of 4 to 1, the Planning Board recommends that Town Meeting approve Article 10.

**Article 10:** To see if the Town will vote to amend Section 9.6 [Mixed Use Overlay District (MUOD)] to add to and revise certain provisions thereof as follows, or take any other action in relation thereto:

The amendments proposed under Part 1 of Article 10 clarify the level of flexibility in the phasing and ownership of land and buildings within the MUOD, in order to alleviate potential obstacles to the financing of MUOD developments. These amendments specifically permit the division of an Area Master Plan into one or more Sub-Area Master Plans, each of which may be developed in one or more phases. In addition, these amendments allow for the physical division of land within an Area

Master Plan Lot into several separate parcels, where each parcel may be individually owned and financed, but where the separate parcels may be viewed collectively to satisfy the requirements of the MUOD.

- 1) Amend Subsection 9.6.3 [Applicability] and add Subsection 9.6.3.1 and Subsection 9.6.3.2 to read as follows:

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 an application 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.

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.

The current Bylaw defines fast order food establishments and permits them in the MUOD 2 and MUOD 3 districts only. At the time of the adoption of this Bylaw, the MUOD 1 district was expected to include predominantly office uses, while it was believed that retail and restaurant uses would be concentrated within the MUOD 2 and MUOD 3 districts. Due, in part, to the definition of “fast order food establishment” in the Bylaw, some of the proposed restaurant uses in MUOD 1 could be classified as fast order food establishments. The amendments proposed under Part 2 permit fast order food establishments, as defined in the Bylaw, in all three MUOD districts, to accommodate the proposed layout of Westwood Station. In that portion of the MUOD 1 district which lies between Westwood Station Blvd. and the residential district, fast order food establishments would only be permitted inside an office or other non-retail building.

The current Bylaw permits restaurants with entertainment as part of any Area Master Plan which includes at least 500,000 square feet, where such restaurants meet other specified criteria. “Entertainment” is broadly defined in the Bylaw, and includes such things as a piano player. Any entertainment use requires a separate license from the Board of Selectmen. The proposed amendments reduce the minimum size for an Area Master Plan including restaurants with entertainment from 500,000 square feet to 300,000 square feet. These amendments are intended to permit the operation of restaurants with entertainment in the first phase of development at Westwood Station, rather than prohibiting entertainment at such facilities until such time as construction associated with the next phase of development brings the area total to 500,000 square feet.

2) Amend Subsection 9.6.5 [Permitted Uses] so that Subsection 9.6.5.6 and Subsection 9.6.5.11 reads as follows:

9.6.5.6 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;

9.6.5.11 Restaurant with Entertainment, provided that (a) the Restaurant with Entertainment is part of an Area Master Plan that includes at least 300,000 square feet of Retail Sales and Services uses in the aggregate; (b) the Entertainment is at all times subordinate and incidental to the Restaurant use; and (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;

The reason for the proposed amendments set forth in Part 3 is the same as in Part 1 – to allow development under multiple phases with multiple parcels in separate ownerships. These changes authorize the Planning Board to allow the project to comply with the Town’s stormwater requirements on an area-wide basis, rather than on a lot-by-lot basis. This allows the Planning Board flexibility to consider conditions to better facilitate development design and best water management. With this amendment, the Planning Board would be better able to consider such issues as requiring recharge and infiltration of stormwater in the most important places, and direct that impervious surfaces be located in less sensitive areas. The strict stormwater requirements of the existing Bylaw are not being changed, just the ability of the Planning Board to approve a design that addresses stormwater on an MUOD Master Plan basis, rather than lot by lot.

3) Amend Subsection 9.6.7 [Alternative Regulations], Subsection 9.6.9.2 [Water Resource Protection District] and Subsection 9.6.9.3 [Open Public Amenity Areas] so that Subsection 9.6.7.4, Subsection 9.6.9.2.4 and Subsection 9.6.9.3 read as follows:

9.6.7.4 The maximum impervious surface requirements shall be met across the aggregate of: (a) all land 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.

9.6.9.2.4 For purposes of providing the minimum amount of vegetation area and the amount of impervious materials coverage in Section 9.3.7.3 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 the 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.

9.6.9.3 **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.

The amendments proposed in Part 4 are intended to clearly state that, once a Special Permit Approval and EIDR Approval are granted by the Planning Board, the minimum number of parking spaces required under such approvals cannot be increased unless there are changes in the nature of the development which trigger the recalculation of that minimum parking space requirement. This is an important change that has been requested by project tenants to facilitate their financing. Under the existing Bylaw, they may have to provide land for additional parking after construction is done and they have been operating in compliance with the parking provisions of the Bylaw for months or even years. This concern directly affects the ability of large tenants to finance construction. Under these proposed amendments, if a phase of development is built in accordance with approved plans, and the uses actually developed are the same as those proposed at the time of approval, the Planning Board cannot reassess parking needs and require the construction of more spaces. However, if the uses actually developed differ from the uses proposed at the time of approval, the Planning Board may modify the parking requirement for consistency with the minimum parking requirements related to the actual uses within the development phase.

- 4) Amend Subsection 9.6.9.1 [Parking Requirements] and add a new Subsection 9.6.9.1.2 so that Subsection 9.6.9.1 and Subsection 9.6.9.1.2 read as follows, and renumber subsections as appropriate:

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

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.

The current Bylaw restricts parking within five feet of any boundary of an Area Master Plan Lot. Due to the changes proposed in Part 1 above, which allow for development of separate Area Master Plans or Sub-Area Master Plans, a literal enforcement of this requirement could result in the placement of unnecessary and potentially disruptive buffer strips between portions of a development, simply because these portions were approved under separate Area Master Plans. The amendments proposed under Part 5 are intended to clarify that the restriction on parking within five feet of a boundary shall only apply to the outside perimeter of a development, and shall not apply to the boundaries between related portions of a single development.

The current Bylaw also requires that parking spaces be primarily located to the rear, sides or below structures, rather than in front of structures or between structures and adjacent sidewalks. These provisions were intended to improve the pedestrian scale and new urban character of development

within the MUOD. While development in close proximity to the MBTA station is expected to maintain characteristics of pedestrian scale, development further away from the train station has recently been proposed to conform with more traditional parking characteristics. Amendments proposed under Part 5 are designed to permit traditional parking lot development in the first phase of construction at Westwood Station. These amendments also give the Planning Board discretion to relax parking location requirements if the board determines that strict enforcement would inhibit the goals of the MUOD Bylaw. These amendments are intended to allow for orderly development of the MUOD to progress in stages, while ultimately achieving the goal of structured parking.

5) Further amend Subsection 9.6.9.1 [Parking Requirements] so that Subsection 9.6.9.1.3, Subsection 9.6.9.1.4, and Subsection 9.6.9.1.5 read as follows:

9.6.9.1.3 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.

9.6.9.1.4 Parking shall preferably be structured 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.

9.6.9.1.5 In an Area Master Plan, the requirements of Section 6.1.23 shall not apply.

A development like Westwood Station would typically have overhanging signage to facilitate safe and efficient navigation. The current Bylaw permits overhanging signs, but limits these signs to only project over sidewalks, which does not meet the necessary design requirements for anticipated signage needs. The amendments proposed in Part 6 would also permit the projection of overhead signs over private ways, and over public streets with the approval of the Board of Selectmen.

In addition, the current Bylaw does not permit the use of off-premise signs. These proposed amendments would permit the Planning Board to approve off-premise signs within an Area Master Plan Lot or elsewhere within the MUOD. These amendments are designed to encourage safe and efficient navigation to and between portions of an MUOD development.

6) Amend Subsection 9.6.9.4 [Sign Location] and Subsection 9.6.9.5 [Signs] so that the subsections read as follows:

9.6.9.4 **Sign Locations.** Signs may be set back less than the fifteen (15) feet from the street line. Signs or sign structures may project or extend over sidewalks, 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 Special 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 Special Permit and with the conditions of any consolidated special permit issued as part of such Area Master Plan Special 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 Special Permit that establishes sign 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.

Part 1 of this proposed amendment allows for divided ownership of land within an Area Master Plan. Part 7 simply specifies that parcels may be created through Approval Not Required (ANR) plans or other lawful means.

- 7) Amend Subsection 9.6.10 [Area Master Plan Requirements] to add the following sentence at the end of Subsection 9.6.10.8:

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.

Article 11 clarifies provisions requiring consistency between an Area Plan Special Permit and any EIDR Approval granted in connection with such special permit. The proposed amendments also introduce new criteria for minor plan modifications to be approved administratively by the Town Planner or other town staff, as authorized by the Planning Board in an EIDR Approval. These new provisions are intended to allow for timely response to requests for minor plan modifications which arise after the Planning Board has granted EIDR approval, thus enabling implementation of an MUOD project to proceed without unnecessary interruption.

By a vote of 4 to 1, the Planning Board recommends that Town Meeting approve Article 11.

**Article 11:** To see if the Town will vote to amend Section 9.6 [Mixed Use Overlay District (MUOD)] to add to and revise certain provisions thereof as follows, or take any other action in relation thereto:

Amend Subsection 9.6.13.1 [Environmental Impact and Design Review], add a new Subsection 9.6.13.2, and renumber subsections as appropriate, so that the amended subsection reads as follows:

- 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 consideration in the Section 7.3 review of individual building applications. The following 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.

Article 12 proposes the addition of a new section within the MUOD Bylaw giving the Planning Board, in its granting of a special permit, the ability to approve deviations from the strict enforcement of all MUOD requirements. These amendments are intended to establish authority for such deviations to be made at the sole discretion of the Planning Board, within set limits on the type and scope of such deviations.

By a vote of 3 to 2, the Planning Board recommends that Town Meeting approve Article 12.

**Article 12:** To see if the Town will vote to amend Section 9.6. [Mixed Use Overlay District] by adding and revising certain provisions thereof, or take any other action relative thereto:

- 1) Amend Subsection 9.6.13 by deleting the word “Conditions” from the title of Section 9.6.13 and replacing it with the new title “General Provisions.”
- 2) Amend Subsection 9.6.13 by adding the following new Subsection 9.6.13.7:

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.

- 3) Amend Subsection 9.6.13 by renumbering existing Subsection 9.6.13.6, entitled “Appeal,” to be Section 9.6.14.