

Hospitality, Recreation and Entertainment Zoning Amendment for Town Meeting

Action by the Planning Board

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December 8, 2020

The following draft of the Hospitality, Recreation and Entertainment zoning bylaw was recommended for Town Meeting by the Planning Board (4-1-0) at the close of its hearing on December 7, 2020. The changes proposed for inclusion in the original filed document are summarized as follows:

- Modified the title and included “overlay” in order to be re-named “Economic Opportunity Overlay District”, and adjust the intent and purpose accordingly.
- Included specifically defined terms – e.g., “EOOD”, “EOOD Special Permit” – in order to clarify what constitutes a project subject to an EOOD Special Permit.
- Added a new Section 2 to clarify how the overlay district and uses function, and that once a landowner exercises rights for an EOOD Special Permit, the land shall only be developed and used for EOOD Special Permit uses and must comply with the section. This language was taken from the Business Development Overlay District.
- Added that the total land area must be contiguous.
- In the Administrative Procedure section (4.b.), added that copies of the application shall be referred to various Town boards/commissions, which shall review the application and submit recommendations to the Planning Board.
- In the Information Requirements section (4.c.), added that (1) the applicant must provide a hydrogeological groundwater study that includes an analysis of groundwater flow, direction, supply, depth and nitrogen loading and that demonstrates that there will be no adverse nitrogen impacts to the surrounding groundwater and surface water resources; and (2) that the Planning Board shall conduct a technical review by a consultant of its choice at the Applicant’s expense.
- Clarified uses by referencing existing definition within the By-Law – e.g., “Open Space”, “Floor Area Ratio”, “Multiple Family Dwellings”.
- Strengthened and clarified the setback language to be clear no buildings may be within 300’ of an existing principal residential structure.
- Increased the setback for taller structures from 300’ to 400’.
- Added an Open Space requirement that requires a minimum of 25% Open Space. The Design Criteria previously included that 20% was expected to be open space, and included a definition. The enhanced requirements utilizes the existing Open Space definition in the By-Law, and is relocated to the Dimensional Requirements section.
- Added a Review Criteria (Section 9.b.) that requires that (1) the applicant demonstrate that there will be no adverse nitrogen impact to the surrounding groundwater and surface water resources, including a showing that the development subject to an EOOD Special Permit satisfies all applicable local, state and/or federal standards and regulations; and (2) specifies that the applicant shall also be required to obtain all other applicable local, state and/or federal permits and approvals required for development of a project subject to an EOOD Special Permit.
- Removes the reference to “masonry” in the architectural materials (Section 11.a.ii.).

Most of these changes were accepted by the Planning Board. In addition, three other changes were added at the meeting:

1. Maintain 'Hospitality, Recreation and Entertainment Overlay' as title of the district.
2. Modify the permitting process to include multiple department reviews
3. Add a reference for the Planning Board to be responsible for groundwater protection, superseding the current Groundwater Protection Overlays.

The resulting draft follows as the proposed bylaw article.

For Special Town Meeting Warrant, January 16, 2021

ARTICLE 1 To see if Town Meeting will vote to amend the Wareham Zoning By-Laws by adding the following overlay district as a new section 470 et seq.:

470 HOSPITALITY, RECREATION AND ENTERTAINMENT OVERLAY DISTRICT

470.1 Intent and Purpose.

To encourage mixed-use development within the Town that will allow and promote economic development opportunities that create sustainable employment opportunities and increase the net tax base of the Town by diversifying and expanding development opportunities within appropriate land areas, north of Route 25, while preserving the health and safety of its residents, and to provide protection for the Town's natural resources from environmentally undesirable or adverse impact by encouraging innovative and efficient planning for mixed-use developments.

The purpose of the Hospitality, Recreation and Entertainment Overlay District ("HREOD") is to provide for a mixture of retail, hospitality, recreational, entertainment, commercial and other compatible uses on large tracts of land in order to foster greater opportunity for the construction of quality developments by providing flexible guidelines which allow the integration of a variety of land uses and densities in one development, provided that such land usage will protect the health, safety and welfare of the public.

470.2 Underlying Zoning District.

The Hospitality, Recreation and Entertainment Overlay District shall overlay but not supersede other zoning districts in which any lot so zoned shall lie. A landowner whose land lies within the HREOD shall not be precluded thereby from (a) electing not to use his/her land for a HREOD Special Permit use and (b) electing instead to use his/her land for an Allowed Use or a Special Permit use in the underlying Zoning District, in which case all of the dimensional, intensity, and other requirements of the Underlying Zoning District shall apply. Once a landowner exercises rights for a development subject to a HREOD Special Permit, the land shall only be developed and used for HREOD Special Permit uses and shall comply with the requirements and restrictions of this Section.

470.3 General Requirements.

470.3.1 Siting Requirements. A mixed-use development within the HREOD may be allowed pursuant to the provisions of this Section through a Special Permit ("HREOD Special Permit") for any parcel or combination of parcels (i) having at least 100 acres of total land area, (ii) that are located north of Route 25 within the R130 Zoning District, and (iii) near a transit station, including bus station and/or commuter bus facility. The total land area included within a development subject to a HREOD Special Permit, irrespective of the number or configuration of parcels or ownership of such parcels, shall contain contiguous parcels.

470.4 Administrative Procedure.

470.4.1 Special Permit Authority. The Planning Board shall be the Special Permit Granting Authority for a HREOD Special Permit. The Special Permit shall conform to this By-Law and to Massachusetts General Laws Chapter 40A, Section 9.

470.4.2 Administrative Procedures for HREOD Special Permit Applications. The review procedure for a HREOD Special Permit consists of:

- a. A pre-application conference with the Planning Department.
- b. Submission by the Applicant and review by the Planning Board of a Master Plan for the proposed development, including all planned phases and elements.
- c. The Planning Board shall refer copies of the application to the Board of Health, Town Engineer, Conservation Commission, Water Department(s), Sewer Commissioners, Police Department, Fire Department, EMS, Municipal Maintenance Department, and Building Inspector, which shall review, either jointly or separately, the application and shall submit their recommendations to the Planning Board.

470.5 Information Requirements.

470.5.1 Pre-submission conference. A preliminary site development plan shall accompany the request for a pre-submission conference with the Planning Department. The plan shall include, generally, existing topography and site features; the location of all proposed structures; parking and loading areas; access roadways; sanitary facilities; stormwater management facilities; and off-site traffic mitigation measures. The preliminary site development plan(s) shall be accompanied by a brief narrative generally conforming to the format of the Environmental Notification Form (ENF) required under the Massachusetts Environmental Policy Act (301 CMR 11.00). If it is expected that the proposed project will require the preparation of an ENF, a draft copy of the ENF shall be submitted.

470.5.2 Special Permit application. Plans accompanying an application for a HREOD Special Permit shall comply with the requirements of Section 1530. In addition, the Applicant shall provide a hydrogeological groundwater study that includes an analysis of groundwater flow, direction, supply, depth and nitrogen loading and that demonstrates that there will be no adverse nitrogen impacts to the surrounding groundwater and surface water resources. The Planning Board shall conduct a technical review by a consultant of its choice at the Applicant's expense.

470.6 Permitted Uses.

470.6.1 The specific mixture of uses and square footages within a mixed-use development subject to a HREOD Special Permit shall be determined by the Applicant consistent with the purpose set out in XXX.X of this By-Law [Purposes], above, subject to Site Plan Review powers accorded to the Planning Board; except that any development under a HREOD Special Permit must include an indoor and/or outdoor commercial recreation facility or place of amusement and residential uses.

470.6.2 The following uses shall be allowed within a mixed-use development subject to a HREOD Special Permit:

- a. Hotel, motel, conference center and other event/function facilities.

- b. Indoor and/or outdoor commercial recreational facilities or other places of amusement.
- c. Health or athletic facilities.
- d. Non-profit recreation.
- e. Restaurant and entertainment uses, including restaurants with drive-through.
- f. Food and beverage services and accessory uses related to hospitality, recreation and entertainment uses, facilities and activities.
- g. Retail and services uses.
- h. Commercial and office uses.
- i. Hospital and medical related facilities.
- j. Veterinary hospital and facilities.
- k. Multiple family dwellings.
- l. Public or private educational uses.
- m. Municipal facilities.
- n. Wireless communication facilities.
- o. Outdoor commercial advertising and billboards proximate to Route 25.
- p. Structured parking facilities.
- q. Public or private transportation facilities.
- r. Wastewater treatment facilities.
- s. Riding stables.
- t. Agriculture, horticulture, viticulture or floriculture, except to the extent exempt under Chapter 40A, Section 3.
- u. Dormitories or temporary housing accessory to the above allowed uses as a convenience to employees or participants in onsite uses.
- v. Childcare center accessory to the above allowed uses as a convenience to employees within the development, except to the extent exempt under Chapter 40A, Section 3.
- w. Accessory uses for educational or scientific research, development or related activities.
- x. Uses accessory to the above permitted uses.

470.6.3 In addition to the permitted uses specified above, additional uses may be permitted as part of the mixed-use development subject to a HREOD Special Permit if, in the judgment of the Planning Board, the proposed uses do not create health, traffic or safety problems for the remainder of the development area and abutter areas and is consistent with the remaining land uses in the development area and the overall plan contemplated by the HREOD Special Permit application.

470.6.4 The following uses are prohibited as part of a mixed-use development subject to a HREOD Special Permit:

- a. Heavy industrial or manufacturing.
- b. Junkyards, salvage yards, contractor yards, dumps, and landfills including landscape/asphalt facilities, medical waste disposal facilities, and hazardous waste facilities and recycling operations.
- c. Rendering plants and slaughterhouses.
- d. Cemeteries and crematories.

- e. Trucking terminals.

470.7 Dimensional Requirements.

Mixed-use developments subject to a HREOD Special Permit are subject to and shall conform to the following dimensional requirements, notwithstanding any provision of this By-Law to the contrary.

- 470.7.1 Density – The maximum allowed Floor Area Ratio for nonresidential uses shall be 0.25. The number of Multiple Family Dwellings, which is defined as three or four units, shall not exceed the number of dwellings that would be allowed for a conventional single-family residential development in the underlying zoning district on up to 10% of the total land area of the mixed-use development.
- 470.7.2 Setbacks – No buildings shall be allowed within 300 feet from any existing abutting principal residential structure.
- 470.7.3 Height – No building within the mixed-use development subject to a HREOD Special Permit shall exceed 80 feet in height, except that buildings and structures associated with large-scale indoor and/or outdoor commercial recreation facilities, hotel/conference facilities, and associated structured parking facilities, up to 150 feet in height, are allowed not closer than 400 feet from any existing abutting principal residential structure. The Planning Board may allow an increase in the maximum height for any accessory structure(s) reasonably necessary for the safe and efficient operation of the principal use (e.g., support poles for netting used as part of a driving range or other similar commercial recreation facility), provided such structure(s) complies with applicable federal and state requirements.
- 470.7.4 Open Space – A minimum of 25% of the mixed-use development subject to a HREOD Special Permit shall be reserved for Open Space.

470.8 Phased Developments.

Mixed-use developments under this Section may be approved in one or more phases authorized under a single Special Permit. The Special Permit for a project approved for development in two or more phases shall include an approximate development timeline and anticipated construction schedule, and shall ensure that sufficient infrastructure improvements are provided to support each phase of development. A Special Permit for a phased development shall be granted by the Planning Board based on the Planning Board's approval of final plans for one or more early phases of the development, along with the Planning Board's approval of preliminary plans for future phases of the development. In such instance, the Special Permit shall be amended by Planning Board approval of final plans for each subsequent phase of development as such plans become available.

470.9 Application of Requirements to Individual Lots.

The requirements of this Section of the By-Law shall not be applied to the individual lots or ownership units within an approved mixed-use development subject to a HREOD Special Permit, but shall be applied as if the entire area subject to the HREOD Special Permit were a single conforming lot, whether or not the same is in single or multiple ownership. Any violation of this By-Law by an owner or occupant of a single lot or ownership unit or demised

premises within an approved mixed-use development subject to a HREOD Special Permit shall not constitute a violation by any other owner or occupant.

470.10 Review Criteria.

470.10.1 In making a decision on an application for a HREOD Special Permit, the Planning Board shall consider the following:

- a. The purpose and intent of the Hospitality, Recreation and Entertainment Overlay District.
- b. Health, safety and general welfare of the public.
- c. Conservation and preservation of the natural environment.
- d. Impacts on abutting properties and neighborhoods.
- e. Proper drainage of the site.
- f. Safe access to and from the development.
- g. Capacity of the existing and/or proposed traffic network to accommodate projected increases.
- h. Adequacy of proposed water, sewer, fire protection and public safety provisions.
- i. Impacts on water resources, including wetlands, streams, water bodies, groundwater and floodplains.
- j. Visual and aesthetic quality.
- k. Impacts on municipal services and fiscal capacity.

470.10.2 Prior to the granting of a HREOD Special Permit, the Applicant shall demonstrate that there will be no adverse nitrogen impact to the surrounding groundwater and surface water resources, including a showing that the development subject to a HREOD Special Permit satisfies all applicable local, state and/or federal standards and regulations. The Board of Appeals shall provide its recommendation(s) to the Planning Board relating to the Applicant's showing that there will be no adverse nitrogen impact to the surrounding groundwater and surface water resources, prior to the Planning Board granting a HREOD Special Permit. The Applicant shall also be required to obtain all other applicable local, state and/or federal permits and approvals required for development of a project subject to a HREOD Special Permit.

470.11 Parking.

470.11.1 The off-street parking and loading requirements of Article 9 shall not apply to a mixed-use development subject to a HREOD Special Permit. The parking and loading requirements applicable for such mixed-use developments are as follows:

470.11.2 In determining the parking requirements for a mixed-use development as part of a development subject to a HREOD Special Permit, the Planning Board shall reference standards published by the Institute of Transportation Engineers and take into consideration any other factors consistent with good traffic engineering practices including the advice of its consultants, and shall set such requirements as are necessary to meet the realistic requirements of the proposed development and satisfy the objectives of this Section. In making such determination, the Planning Board may consider complementary uses and activities having different peak demand periods to

share parking facilities, transportation demand management (TDM) measures, and such other means as may be applicable.

470.11.3 Shared parking arrangements may be permitted when determined by the Planning Board to be appropriate based upon an analysis of peak demands, and a finding is made that the reduction in parking would serve the public good and that the surrounding area in which the development is located will not suffer from substantial adverse impacts from the reduction in parking.

470.11.4 The Applicant shall demonstrate sufficient off-street loading space to insure all loading operations take place off the public way.

470.12 Design Guidelines and Performance Standards.

470.12.1 Building Design

- a. Structures shall be designed to create a visually pleasing, unifying and compatible image for the development as a whole. Any combination of architectural design elements may be employed to meet this standard, including building color, texture, materials, scale, height, setbacks, roof and cornice lines, signs, and elements such as door and window size and location, and door and window detailing.
- b. Exterior walls for the project shall use a combination of architectural materials. To avoid long unbroken expanses of wall, the architecture shall incorporate, as appropriate, design features providing horizontal and vertical relief including projections, building jogs, elements of transparency or windows, architectural detailing, and changes in surface materials. The design of public entrance ways shall incorporate architectural features and elements to emphasize the entrance locations and interrupt long stretches of building facade. The facades of parking structures shall be designed to a standard of architectural finish consistent with other buildings within the project. All exterior walls shall be designed and finished with materials that maintain a consistent architectural character with adjoining buildings.
- c. Buildings and parking structures shall be designed with common elements that both create a sense of unity and express a relationship to the interior.
- d. Rooftop mechanical features, heating and air conditioning units, vents, stacks, and mechanical penthouse(s) shall be screened by use of parapet walls or similar elements.

470.12.2 Utilities

- a. All new, permanent utilities such as electricity, telephone, gas, and fiber optic cable to be installed in connection with the Special Permit development shall be placed underground.
- b. Access easements to any utility connections shall be granted to the Town and/or utility provider to assure maintenance and emergency repair.

470.12.3 Exterior Elements and Landscaping

- a. Open space or publicly-accessible common areas shall be included within the development, to encourage pedestrian activity and to visually separate buildings or groups of buildings. When reasonably feasible, independently sited common areas

shall be connected to other nearby open space and common areas by use of pathways and other similar pedestrian connections.

- b. Exposed storage areas, exposed machinery or electric installations, common service areas, truck loading areas, utility structures, trash/recycling areas and other elements of the development infrastructure shall be subject to reasonable visual mitigation requirements, including, but not limited to, screen plantings or buffer strips, combinations of visually impermeable fencing and plantings, or other screening methods necessary to assure an attractive visual environment.
- c. Landscaping shall be composed of low-maintenance plants that are drought tolerant and are pest and disease resistant.
- d. Surface parking lots should be interspersed with trees for shading. Hardwood shade trees should be a minimum three inch (3") caliper and evergreens should be six inch (6") minimum. Ornamental trees should be interspersed within vegetative clusters.

470.12.4 Lighting

- a. The project design of a mixed-use development subject to a HREOD Special Permit is encouraged to be dark sky compliant to reduce light pollution and conserve energy, while maintaining reasonable nighttime safety and security. If this is not feasible due to security or safety concerns, lighting for outdoor nighttime activity and entertainment areas shall be limited to the area of the activity as much as possible, and lighting shall be designed so as to avoid any material light trespass and glare on adjacent neighborhoods and streets. Lighting in minimally-used areas shall be reduced after business hours.
- b. Exterior lighting fixtures shall be of the full-cutoff type, and hoods and shields shall be incorporated as needed to prevent light trespass and glare.

470.12.5 Green Design

- a. A mixed-use development subject to a HREOD Special Permit shall incorporate energy-efficient technology in building materials, lighting, heating, ventilating and air conditioning systems, as well as use of renewable energy resources, and shall adhere to the principles of energy-conscious design with regard to building orientation, shading, landscaping and other elements. Efforts shall be made to harmonize energy-related components with the character of a building and its surroundings and to prevent adverse effects on the energy consumption of neighboring structures and on the environment.
- b. Wareham has voted itself a green community and has adopted the "Stretch Code", an appendix to the MA Building Code. All designs must comply with Stretch Code requirements for energy- and resource-efficient materials, insulation, lighting, mechanical systems and building systems.

470.12.6 Site Preparation

- a. Site clearing of soils, trees and other vegetation for development shall follow the standards of Article 12 of the Zoning By-Law.
- b. A disposal plan for vegetative waste shall be submitted prior to clearing that recycles and contains vegetative waste on-site, as much as possible.

470.12.7 Signage.

Signs within a mixed-use development subject to a HREOD Special Permit are permitted subject to the following requirements and standards.

- a. The proposed location and size of all signs must be indicated at the time of submission of the final plan.
- b. In recognition of the interrelated nature of signage systems in complex, mixed-use developments, and the importance of clear, adequate, and effective signage to the safe and efficient operation of such developments, notwithstanding any provision of the By-Law to the contrary, the Planning Board shall determine during the hearing(s) on the Special Permit application the appropriate dimensional and design requirements for approval of a signage package for the mixed-use development subject to a HREOD Special Permit. In considering the appropriate signage package for a development, the Planning Board shall consider the scale of the development and buildings, number and types of uses within the development, and whether the signage adequately addresses the needs of the development and traffic safety while appropriately balancing any impacts on the surrounding environment.

470.13 Severability.

If a Court of competent jurisdiction holds any provision of this By-Law invalid, the remainder of the By-Law shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this By-Law shall not affect the validity of the remainder of the Town of Wareham's Zoning By-Law.

or to do or act in any manner relative thereto.