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Board of Appeals
Planning Board

TO: Board of Selectmen and Members of Town Meeting

FR: Planning Board

RE: Recommendations on Article 1, Amendment to section 9.3 of the Town of Maynard Protective Zoning Bylaws and Article 2, “Concept Plan ‘B’ dated March 26, 2013” both of the Special Town Meeting Warrant for May 19, 2013.

DA: May 15, 2013

Reference is made to the above captioned matter and the Planning Board public hearings regarding same or similar versions of the same article. In that connection, the Planning Board has duly considered the proposed zoning and Concept Plan and has made recommendations regarding same as are set forth below.

The Planning Board advertised a public hearing for an earlier version of the proposed changes to Section 9.3 of the Zoning Bylaw entitled “Neighborhood Business Overlay District” on February 14 and February 21, 2013 and opened a public hearing on March 12, 2013. The proponent presented the plans and changes to the zoning at both hearings. The Planning Board Peer review consultants presented their findings with regard to economic impact, traffic impact and overall general impact and quality of the plan. The public was provided opportunities to comment as well. That hearing was continued to April 4, 2013. Again, the proponent, the Town’s consultants and the public were provided opportunity to comment on the zoning and the concept plan. Further, the Planning Board reviewed the zoning on a line by line basis and provided feedback to the proponent and the public regarding the concept plan.

Given the number of changes and recommendations of this Board and the proponent the proposed Zoning which appears as Article 1 in the Special Town Meeting warrant was again advertised on April 16 and April 23, 2013. The new public hearing was opened on April 30, 2013. However, due to the date being a special election and in accordance with G.L. c. 40A §11, the public hearing was continued without taking any evidence or discussing any matter to May 8 and May 15, 2013. On May 15, 2013 following several more hours of discussion and public input, the Planning Board closed the Public Hearing and voted to make the following recommendation:

The Planning Board recommends the NBOD Zoning Amendment in Article 1 of the Special Town Meeting May 19, 2013 as advertised on April 16 and April 23, 2013.

In the future, however, the Planning Board would recommend that the Town undertake to incorporate an Affordable Housing provision in the Zoning By-Law generally.

However given the benefits provided as a part of this development, those benefits outweigh the need to include such a provision in the proposal.

Article 1: Proposed Changes to section 9.3, Neighborhood Business Overlay District.

Item 1

Section 9.3.2 Applicability. The NBOD is an overlay district superimposed over, rather than replacing, the applicable underlying zoning districts. The NBOD authorizes certain uses not allowed in the underlying base district provided certain special terms and conditions are met regarding the establishment of such uses. Where the NBOD authorizes uses not otherwise allowed in the underlying district, the provisions of the NBOD shall control. Except as provided in this Section 9.3, the NBOD does not in any manner alter or remove the zoning rights permits in the underlying base zoning district(s). Nothing contained in this section 9.3 shall prohibit or limit uses otherwise permitted by right or by Special Permit in the base zoning district(s).

Where any provision in the NBOD is silent the applicable provision of the Protective Zoning By-Laws shall control. Where any provision of the NBOD is not silent, the provision of the NBOD shall control.

The Planning Board recommends this proposed change.

Item 2

9.3.3 Requirement for Approval of a Concept Plan at Town Meeting. No development for uses not otherwise allowed in the underlying zoning district shall be permitted on any land within the NBOD without first obtaining approval, by a majority vote at Town Meeting, of a Concept Plan that identifies the proposed development. **A Concept Plan shall be defined as a plan of the proposed development which is preliminary and conceptual in nature and which shall include the general use and approximate size and location of the buildings, project layout, proposed roads, parking, and all items as set forth in subparagraphs 1-10 below along with all other amenities, to the best of the property owner's knowledge as of the date of the Concept Plan.** At the property owner's discretion, one or more Concept Plans may be submitted at different times and a Concept Plan may include development of all, or any smaller portion, of the relevant parcel or lot. Each Concept Plan submitted for approval at Town Meeting shall include the following information:

1. The area of land proposed to be developed under the NBOD regulations, which may be less than the total area of the applicable lot.
2. The topography of the land to be developed.

3. The location of wetlands and water bodies, if any.
4. The location of existing roads and ways serving the land to be developed.
5. The general location, size and shape of existing structures to be removed, and the general location, size and shape of existing structures to remain.
6. The general location and size of all required buffer areas provided in compliance with Section **9.3.11.3.**
7. The general location and approximate size of all proposed new buildings, the final **location and size of each building** to be determined via the Town’s site plan review process and shall not exceed the dimensional requirements in Table G.
8. Examples of amenities and design features to be included as part of the proposed development.
9. Illustrations of the general architecture of the proposed structures.
10. A preliminary traffic impact analysis.
11. **Prior to the vote at Town Meeting on the Concept Plan, a Development Agreement shall be signed by the Board of Selectmen, Planning Board and** the Property Owner (“Developer”) that addresses, but is not limited to, the following:
 - a. **Any proposed exactions, financial gifts, easements or land gifts**
 - b. **Payment for consultant review of plans and documents accompanying Concept Plan**
 - c. **The timing of assessment of new improvements**
 - d. **The Developer’s payment for design and implementation of traffic**
 - e. **Transfer of responsibilities and commitments in the event the property is sold**

The Planning Board recommends this proposed change. The Planning Board has required that sections B(3) and F(5) of the Development Agreement include language to amend the Development Agreement once the final traffic, water and sewer, stormwater and landscaping plans are presented and reviewed by the Town at the Site Plan Review or Special Permit process in order that the Development Agreement accommodate any additional mitigation that may be in order and determined by the Planning Board to be necessary.

Item 3

9.3.5.1 Permitted Principal Uses. The following uses are allowed by right in the Neighborhood Business Overlay District:

- Healthcare Facility, **including Clinic and Medical, Dental and Psychiatric Office**
- Health Club
- Restaurant*
- Garden Center
- General or Personal Service Establishment and Business or Professional or Other Office**
- Supermarket
- Retail Business
- Wholesale Business
- Mixed Use with fewer than five (5) dwelling units
- Multiple principal uses on a single lot or parcel within the NBOD
- Printing Shop**
- Emerging Energy Technology Establishment**
- Child Care Center**
- Adult Day Care**

***There shall be no more than three (3) Restaurants allowed by right.**

The Planning Board recommends this proposed change.

Item 4

9.3.5.2 Prohibited Uses. In addition to any use which is not specifically permitted in this Section 9.3 and which is otherwise prohibited in the underlying district, any Medical Marijuana Dispensary and/or growing facility shall be prohibited in the NBOD.

The Planning Board recommends this proposed change.

Item 5

9.3.7. Uses Permitted by Special Permit of the Planning Board. The following uses are allowed by Special Permit in the Neighborhood Business Overlay District:

- Elderly Housing and Assisted Living Residence**
- Parking Structures
- Mixed use with five (5) or more dwelling units
- Motor Vehicle Light Service**
- Brewery with Ancillary Food Service**
- Fast Food Restaurant**
- Multi Family Dwelling**

Restaurant (the fourth (4th) or more)

The Planning Board recommends this proposed change.

Item 6

9.3.8 Dimensional Requirements. Table G lists the dimensional requirements for each single principal use within the NBOD, **unless otherwise set forth in Section 9.3.**

TABLE G: NBOD DIMENSIONAL REQUIREMENTS

<u>Principal Use</u>	<u>Maximum Gross Floor* Area</u>	
1. <u>Multi-Family Dwelling and Garden Apartment and Elderly Housing and Assisted Living Residence</u>	<u>325,000 s.f.</u>	
2. <u>Retail Business and all other Permitted Principal Uses set forth in Section 9.3.5 other than 1. and 3. in this Table G</u>	<u>328,000 s.f. total calculated as follows:</u>	
a. <u>No more than 1 structure</u>	<u>118,000 s.f.</u>	
b. <u>No more than 1 structure</u>	<u>117,000 s.f.</u>	
c. <u>No more than 2 structures</u>	<u>50,000 s.f.</u>	
d. <u>No more than 2 structures</u>	<u>14,000 s.f.</u>	
e. <u>No more than 5 structures</u>	<u>29,000 s.f.</u>	
3. <u>Municipal Facility</u>	<u>55,000 s.f.</u>	

***The maximum gross floor area for any non-residential single tenant or related entity under common control shall be 85,000 s.f.**

The Planning Board recommends this proposed change.

Item 7

9.3.9 Non-Residential Total. The total gross floor area for all principal uses within the NBOD, including nonresidential portions of Mixed Use structures, excluding multifamily dwellings, healthcare facilities, and residential components of mixed use structures, shall not exceed **the corresponding Maximum Gross Floor Area set forth in Table G.**

The Planning Board recommends these proposed changes.

Item 8

9.3.10 Housing Cap. The maximum number of housing units in the NBOD shall not exceed **two hundred fifty (250).**

The Planning Board recommends this proposed change.

Item 9

9.3.11 Design Criteria. In addition to provisions in other sections of this By-law **concerning design criteria to the extent they may be applicable**, the criteria listed in this Section 9.3.11 shall apply to any action in the NBOD requiring site plan approval under Section 10.5.

1. Lighting. These standards are intended to: promote a lighting design for all development within the NBOD to ensure public safety and welfare; and protect the night sky from unnecessary ambient light. Any lighting plan submitted as part of a Site Plan Review application, shall include the following:
 - a. All lighting installations shall be designed to achieve no greater than the minimum luminance levels for the activity as recommended in the most recent standards established by the Illuminating Engineering Society of North America (IESNA);
 - b. To prevent glare on off-site locations, all outdoor lighting fixtures shall be full cut-off

(Full cutoff means that no light is emitted above the horizontal plane that intersects the lowest part of the fixture). Where necessary to prevent light or glare, accessories such as hoods and shields shall be used on lighting fixtures. The source of light **shall be low profile lights of twenty-five (25) feet or less and** shall be so arranged and shielded as to prevent direct glare from the light source into any public street or onto adjacent property;

- c. Security lighting shall be shielded and directed at a downward angle.
- d. As part of any application for Site Plan Review, the applicant shall prepare a lighting study showing that the development will meet these standards.

2. Utilities Underground. All new, non-municipal utilities (such as electricity, telephone, gas, fiber optic cable) shall be placed underground.
3. Setbacks/Buffers. For the construction of any new building, **front setback area of at least one hundred (100) feet, and rear setback area of at least fifty (50) feet and side setback area of at least sixty (60) feet shall be provided at the perimeter of the NBOD development where it abuts the property line of any residentially zoned properties and twenty (20) feet where it abuts open space** zoned properties, except for fences twelve (12) feet in height or less and driveways necessary for access and egress to and from the new building(s); provided, however, that existing structures and existing access roadways and paved areas are exempt from this requirement. Notwithstanding the preceding, existing structures and paved areas shall not be made more non-conforming except for American with Disabilities Act (ADA) compliance. A buffer area of **no less than forty (40) feet in the side and rear setback areas and twenty (20) feet in the front setback area** shall be provided where the **perimeter of the NBOD development** is contiguous to the property line of another lot within an existing residential district. The buffer shall be landscaped and screened by way of fences, walls, and/or plantings (including existing vegetation and trees) to reasonably and substantially shield abutting land from parking and loading areas and buildings. Any such fences or walls may, in the reasonable determination of the Planning Board, provide openings to allow safe pedestrian access and egress between the development sit and the adjacent neighborhood.
4. Parking. Required parking shall be **one (1) spaces per three hundred (300) square feet of gross floor area for office, retail, supermarket and all other allowed uses not set forth herein.** For outdoor sales and display areas of a Garden Center uses, required parking shall be one (1) space per three thousand (3,000) square feet of outside merchandise display area. **For multi-family and other dwelling units, except Elderly Housing which shall be controlled by section 6.1.5, the required parking shall be 1.75 spaces per unit. For all restaurant uses, required parking shall be one (1) space per eighty-five (85) square feet of gross floor area. For warehouse uses, required parking shall be one (1) space per twenty-five hundred (2,500) square feet of gross floor area. Relief from these parking standards may be granted by special permit by the Planning Board.**
5. **Dimensional Requirements. The minimum requirements of the NBOD development shall be an area of 15,000 s.f.; 100 feet of frontage and 100 feet in width; total maximum building coverage 35% of the NBOD development; maximum building height of fifty-two (52) feet for residential uses and forty (40) feet for any other uses within the NBOD; minimum landscape open area of 20% of the NBOD development; and minimum landscape open area of 5% in the front yard of the NBOD development.**

The Planning Board recommends this proposed change. The Planning Board is concerned that it is not clear that an existing driveway in a residential zone which abuts the development should require a buffer between any proposed driveway or existing driveway in the proposed development. As a result, in order to clarify same, the Planning Board has included in the Development Agreement that notwithstanding the exception for driveways necessary for access and egress to and from new buildings noted above, where a driveway in the NBOD abuts a driveway in a residential zone, the buffer requirements herein shall apply.

Item 10

9.3.12 Site Plan Approval. The provisions of Section 10.5, Site Plan Approval, shall apply to uses, buildings and structures permitted by right or by Special Permit in the NBOD.

1. All new development pursuant to the NBOD shall be subject to Site Plan Approval from the Planning Board. The Planning Board may permit modifications to the proposed development in connection with its site plan review, provided that the Planning Board finds, in its reasonable discretion and in writing, that any such modifications do not **substantially and** materially conflict with the general intent of the Concept Plan as approved.

The Planning Board recommends this proposed change.

Item 11

9.3.14 Special Permit Granting Authority. The Planning Board shall be the Special Permit Granting Authority for this Section 9.3.

The Planning Board recommends this proposed change.

In addition to the foregoing recommendations to the change in section 9.3 of the zoning, the Planning Board has required and the proponent has agreed at an earlier meeting to include in the Development Agreement all of the additional Traffic Studies as recommended by Faye Spofford and Thorndike in their peer review. Further, the Development Agreement contemplates that further traffic mitigation will be required once the Site Plan Review and/or Special Permit process commences. Additionally, the Planning Board has included in the Development Agreement the following design criteria:

- All residential buildings shall be built outside the wetlands areas but may be built within the wetlands buffer zones to the extent permitted by the Conservation Commission and further the placement of said buildings shall comply with all local, state and federal regulations and laws regarding same.
- The site shall be designed to provide for well defined and friendly and inviting residential connection with the remainder of the development encouraging the use of sidewalks.
- Connections to the hiking trails should be included.
- The residential space should be inviting and open rather than closed off from the remainder of the development.
- Parking spaces in the overall site plan should be reduced by 120 spaces or more from the February 2013 Concept Plan, if appropriate to allow for increased setbacks and more green space within the design of the commercial areas.
- Bike lanes should be designed within the Parker Street area if able to do so.
- Developer shall use best efforts to pull away the commercial development from the Dettling Road residential neighborhood.

Article 2 Concept Plan

The Planning Board reviewed Concept Plan B dated March 26, 2013 and requested that the Developer make certain design changes. The Developer presented a new concept plan dated May 8, 2013 incorporating those changes. The Planning Board recommends the Concept Plan B package dated March 26, 2013 with the substitution of the Concept Plan page dated May 8, 2013 and which was presented and filed with the Planning Board on May 15, 2013.