



## Director of Community and Economic Development

# UPDATE

December 20, 2021

---

### ■ Request for Minor Modification to the Special Permit & Site Plan Approval – 256 Ayer Rd

As described in the letter to the Board from Bruce D. Ringwall, President of Goldsmith, Prest, & Ringwall, Inc. dated December 14, 2021, the recipient of a Special Permit from June 2020 for 256 Ayer Road is seeking Planning Board determination as to whether a proposed set of site improvements constitutes either a major or minor modification, or even simply a minor site plan modification. If deemed by the Board to be a major Special Permit modification, then a public hearing would be required along with other requirements of a full application to the Board.

Specifically, as described in the letter and shown on the submitted plan, the applicant seeks to:

1. Build a 1,815 s.f. building addition
2. Remove a 1,976 s.f. garage in a different location than the addition
3. Make other small changes to the site.

As per Chapter 133-30(A) of the Code of the Town of Harvard, “*The Board shall determine whether any request for further alterations to a site constitutes a minor modification and therefore does not require an amendment to the special permit.*”

Note that Standard Condition VIII of the June 15, 2020 Decision states, “*This decision allows the proposed improvements and activities in the location shown on the approved site plan. No alterations, changes to the approved improvements, other additional uses or additional improvements shall be allowed without further review and approval by the Planning Board in the form of a modification to the Special Permit.*”

Based on these two cited provisions, it is asserted that (1) the approved Special Permit covers a specific development and use schema as indicated on the approved site plan and that “*no additional uses or improvements*” are allowed unless the Planning Board reviews and approves them, and (2) the Planning Board has the discretion to evaluate a proposed alteration as either a major or minor modification. As stated, a minor modification would thus not require an amendment to the Special Permit. However, a major one would so require such an amendment.

Unfortunately, there is no precise guidance to the Planning Board as to the threshold of what would constitute a major versus a minor modification. Therefore, I would offer the Board several potential criteria in which to make such a judgement.

1. First, if a proposed addition or alteration is *de minimus*, or being so incidental or minimal as to not have any impact on a range of criteria such as increasing the scale or intensity of the use, adding impervious surface or building area, changing the massing or location of buildings on the site, changing parking or circulation patterns, adding or removing landscaping, or any other criteria that is more than negligible or insignificant. In this case, the Board may make a case for a minor modification provided that the Board articulates how it has assessed the *de minimus* nature of the change.
2. Second, Special Permits decisions are filed with the Registry of Deeds and such a decision refers to a specific site plan that was approved as part of the Special Permit. Any substantial alteration of the site plan must be linked to the decision by referral. Therefore, should a future inquiry by any actor such as a realtor, bank, appraiser, or attorney, fail to note the revised site plan that differs substantially from that approved as part of the Special Permit, this could be problematic.

It appears that the garage is going to be “removed” but the plan note is not clear on this point. If the garage is to be completely removed and this area would no longer be impervious surface (e.g., loamed and seeded), then the applicant could claim that impervious surface is being reduced. If this is not the case, then impervious surface is being increased by 1,815 s.f. This determination could be a factor in determining *de minimus* as any other element related to building placement such as fire protection, plumbing, etc. could be simply a site plan review criteria. Note that the applicant claims that the 1,815 s.f. building is noted as being for storage and operating space. The Board should determine what “operating” is specifically since if this increases the capacity of the business to attract more customers or staff, then it would seem to elevate beyond a minor modification. My sense is that this should re-open the Special Permit for a modification and any changes to the site and use can be captured in the hearing. But discretion belongs to the Board in this matter.

---

## ■ OSRD Review Discussion

As noted in the comments document sent on 12/15, So far I have received comments from four individuals. I have recommended that we focus on specific review subjects as follows:

1. Overall Document Organization and Structure
2. Errors, Omissions, Inconsistencies, Conflicts
3. Key Question #1: By-Right, Special Permit, or Both
4. Key Question #2: The Economics of OSRD (Public and Private)
5. Key Question #3: Open Space Ownership and Maintenance
6. Dimensions, Calculations, and the Overall Math of the Bylaw
7. Other Issues

Should the Board agree to this review process, we could begin discussion of #1, Overall Document Organization and Structure, on Monday night. The current structure of the Bylaw draft 2.0 is as follows:

**A. Purpose and Intent**

**B. Applicability**

**C. Open Space**

- (1) Generally
- (2) Open Space Criteria
- (3) Permanent Open Space

[1] Permanent Preservation of Open Space Land

[2] Ownership of Open Space Land

[3] Maintenance Standards for Open Space

**D. Development Density**

- (1) Formula Method
- (2) Residential Density Bonuses

**E. Permitted Uses**

**F. Conditional Uses**

**G. Dimensional and Design Requirements**

- (1) Development Types
- (2) Minimum Private Lot Sizes in OSRDs
- (3) Dimensional Requirements
- (4) Arrangement of Lots and Structures
- (5) Design Requirements

**H. Project Site Design Process**

**I. Formal Process and Application**

Several commenters have criticized this structure and it makes sense to begin an overall review with consensus on that aspect.

Jeff Brem has suggested to us consideration of [Westford's OSRD \(p. 58\) or Flexible Development \(p. 63\) sections](#). I have provided an outline of each section below for your review:

## **7.1 OPEN SPACE RESIDENTIAL DEVELOPMENT**

- 7.1.1 Purpose
- 7.1.2 Applicability
- 7.1.3 Planning Board Determination
- 7.1.4 Minimum Dimensional Requirements
- 7.1.5 Minimum Yard Requirements
- 7.1.6 Common Land
- 7.1.7 Other Design Requirements
- 7.1.8 Legal Requirements for Common Land Ownership and Maintenance
- 7.1.9 Special Regulations
- 7.1.10 Procedures for Approval
- 7.1.11 Review by Other Boards
- 7.1.12 Public Hearing
- 7.1.13 Relation to Subdivision Control Act
- 7.1.14 Findings of Board

## **7.2 FLEXIBLE DEVELOPMENT**

- 7.2.1 Purpose
- 7.2.2 Applicability
- 7.2.3 Procedures
- 7.2.4 Design Process
- 7.2.5 Modification of Lot Requirements
- 7.2.6 Basic Maximum Number of Dwelling Units
- 7.2.7 Density Bonus
- 7.2.8 Affordable Component
- 7.2.9 Standards
- 7.2.10 Contiguous Open Space
- 7.2.11 Ownership of the Contiguous Open Space
- 7.2.12 Decision
- 7.2.13 Relation to Other Requirements

## **MASSACHUSETTS STATE MODEL BYLAW**

- 1. Purpose and Intent
- 2. Eligibility
- 3. Special Permit Required (Optional)
- 4. Pre-Application
- 5. Design Process
- 6. Procedures
- 7. Basic Minimum Number (of Lots, Units, Brs)
- 8. Reduction of Dimensional Requirements
- 9. Open Space Requirements
- 10. Design Standards
- 11. Decision of the Planning Board
- 12. Increases in Permissible Density

I have not had a chance to review the Westford Bylaws but they may offer some guidance since they are already on the books.

---

## **■ DRAFT Compliance Guidelines for Multi-family Districts Under Section 3A of the Zoning Act**

On Wednesday, December 15<sup>th</sup>, the Department of Housing and Community Development released Compliance Guidelines for the requirements for MBTA communities to establish an as-of-right (by-right) multifamily housing zoning district. Upon cursory review of the documentation, I wanted to provide members with some highlights:

- 1. Must establish a district of a “reasonable” size (at least 50 acres of land).
- 2. May have sub-districts with differing densities as long as the overall district meets the minimum requirement.
- 3. Must allow at least 15 units/acre (minimum gross density).
- 4. Must be without any age restrictions.
- 5. Must be legally and practically allowed.
- 6. Should be in areas that have safe and convenient access to transit by bicycles and pedestrians.
- 7. Must allow for at least 10% of units as share of total housing stock.
- 8. Communities must estimate the unit capacity for each district. The minimum required capacity must be attainable in the district(s).
- 9. Districts may be established that already include existing multifamily units.

10. When an MBTA community has no land area within 0.5 mile of a transit station (Harvard), the multi-family district should, if feasible, be located in an area with reasonable access to a transit station based on existing street patterns, pedestrian connections, and bicycle lanes, or in an area that otherwise is consistent with the Commonwealth's sustainable development principles.
11. DHCD must make a "Determination of Compliance" for each applicable community, which may be interim, allowing Harvard to establish the requisite bylaws and mapped area(s).
12. Interim compliance requires:
  - a. Creation of an Action Plan
  - b. Implementation of Action Plan
  - c. Adoption of Zoning Amendment
  - d. Request Determination of Full Compliance
13. Effect of Non-Compliance – The MBTA community will not be eligible for funds from the following grant programs: (i) the Housing Choice Initiative; (ii) the Local Capital Projects Fund; or (iii) the MassWorks infrastructure program.
14. To remain in compliance while DHCD is collecting public comment on the Draft Guidelines, an MBTA community must:
  - Submit the MBTA Community Information Form by 5:00 p.m. on May 2, 2022.
  - Hold a briefing of your City Council, Town Council or Select Board on the Draft Compliance Guidance no later than May 2, 2022 and attest to that on the MBTA Community Information Form.

I recommend that the Planning Board discuss this item briefly on the 20<sup>th</sup> but set an agenda item to discuss in greater depth in January. This meeting should cover the following:

1. How to go about searching for land or lands suitable to rezone multifamily.
2. Develop criteria for site(s) location and Bylaw elements.
3. Development of a draft Bylaw.
4. How to engage the public in this process.
5. The development of an "Action Plan"

Since the Select Board should be informed of the Board's interest in developing steps to pursue as part of an Action Plan as soon as possible, the Planning Board should formally notify the Select Board as soon as possible after December 20<sup>th</sup> that the Planning Board will discuss this in January. Should the Select Board wish to make recommendations to the Planning Board or collaborate to a degree, this can be organized well before January.

I may have additional detail prior to our Monday meeting. If you have any questions prior, please contact me at [cryan@harvard-ma.gov](mailto:cryan@harvard-ma.gov) or 978.456.4100.323.

---

## ■ Other Topics in Planning and Development

### *Land Use Boards Organizational Recommendations*

The creation of a F/T Conservation Agent is still in discussion. The two administrative assistant positions requested as part of this plan have morphed into a single 35/hpw

administrative position that will serve Planning Board, ZBA, Conservation Commission, Board of Health, and the Building Commissioner, and also serve as the receptionist for the new work space.

### ***Ayer Road Vision Plan RFP***

The Select Board voted to accept the recommendation of the Review Team. The Team has notified the selected consultant, TCG/TischlerBise, and requested that they develop a revised scope and standard contract for Town review. The consultant has already provided a draft of a survey form that staff has commented on and sent back to consultant. Any additional comments from the Team can also be forwarded to the consultant.

### ***Devens Discussion***

*UPDATE:* Met with the Town Administrator including a brief review of the negotiation points and why timing is seen as critical now. The response was supportive of the Planning Board's interest in the issue and noted how some items were potential areas for further consideration.

### ***George Proakis Form-Based Code Discussion***

Mr. Proakis provided links to both the presentation and the Simsbury Code, as follows:

The presentation:

<https://www.dropbox.com/s/2nyaausbjbqzk49/211206%20harvard%20%20-%20%20Compatibility%20Mode.pdf?dl=0>

The Simsbury code:

<http://www.growsmartri.org/training/Municipal%20Examples%20for%20Form-Based%20Zoning/Simsbury%20CT%20Center%20FBC%20and%20Regulating%20Plan%2001.21.11.pdf>

### ***Hazard Mitigation Plan***

As noted two weeks ago, we have received four (4) responses and they have been distributed to the review team. I also got word from the State that the grant program that I though could be an alternative way to fund this project, was pushed back several months. This reduced the attractiveness of this fund since the timing of getting the update was so critical.

Currently I am trying to set of a review team meeting in January via Doodle and also have contacted the Town Administrator regarding a project committee.

### ***Transportation Planning***

*MassTrails Grant* – TEC developed a cost estimate for this project (design and engineering) and also a project area map that could be submitted with a grant application.

The TAC met on the 14<sup>th</sup> and there was a lack of agreement as to whether we could be ready for an early February application, particularly since Devens has had some issues that it still needs to work through. I have also filed a Reserve Fund Transfer for the 20% match for a grant application but due to lack of resolve for moving forward now, this may be withdrawn.

*Transportation Plan* – MRPC is in the process of developing a draft plan for review by the Planning Board, TAC, and CRWG. Once this has been done and edits made, it will be ready to schedule a presentation to the Select Board. There have been no further updates since the last report. I hope to find out what it going on later this week.

### ***Community Resilience Working Group***

The CRWG is petitioning the Select Board to become a full advisory committee and this discussion will be rescheduled to Tuesday, December 21<sup>st</sup>.