



TOWN OF WESTON

PLANNING BOARD
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RECOMMENDATION TO THE MODERATOR

DATE: November 12, 2019
TO: Doug Gillespie, Moderator
FROM: Imaikalani Aiu, Town Planner
RE: **Annual Town Meeting Article 9 Amend Zoning By-Laws – Transit-Oriented Senior Development (TOSD)**

On November 6, 2019 the Planning Board held a hearing on the proposed Zoning Bylaw Amendment, which would create a Transit Oriented Senior Development (TOSD) use. The Applicants presented the proposed amendment and compared the implementation of an eight unit TOSD at 255 Merriam/11 Hallet Hill to the 10-unit development [approved by the ZBA, December 2, 2016](#) under MGL 40B. The applicant also proposed to amend the article by changing the Planning Board review of the development from Site Plan Approval to Special Permit.

The Town Planner reviewed a comparison ([Attachment 1](#)) between the proposed TOSD bylaw and the existing Active Adult Residential Development (AARD) use on which the article is based. Many of the design guidelines and development standards remain the same, and there are the expected differences between the two uses such as lot size and proximity to transit. There are also notable differences, such as:

- Density – The TOSD density is 3 units per acre; AARD is 1.5 units per acre. The TOSD prescribes an RGFA to Buildable Area maximum of 21%; the AARD prescribes 11%.
- Allowed Use – The AARD, is allowed in Residential A and B and Business B zoning districts; the TOSD is allowed in those districts and in one additional, Residential C.
- Setbacks – The TOSD allows for reductions in the setbacks at property lines in the Residential A and B districts and at roads, except for scenic roads. The AARD property line setback is consistent with the underlying zoning district.
- Open Space – The AARD has numerous standards for open space, trails and perimeter buffers; the TOSD does not have an open space component
- Unit and Height Size – The TOSD prescribes a maximum unit size and height; the AARD does not
- Affordable Housing – The AARD requires 10% minimum Affordable Housing; the TOSD does not have an affordable component
- Age Restriction – The AARD requires that all residents be over 55. The TOSD requires that one resident be over 55. Matching the AARD requirement would be inconsistent

with current fair housing rules and it is unclear how the TOSD age requirement would be enforced.

The Board received public testimony which is recorded in the approved minutes.

The Board cited several concerns with the bylaw as proposed:

Spot Zoning: Town Counsel provided a legal opinion dated March 2, 2018 ([Attachment 2](#)) on an earlier version of the proposed bylaw amendment and an email on July 31, 2019 updating that opinion ([Attachment 3](#)) based on the current petitioned bylaw amendment. Town Counsel stated that proposed bylaw may be susceptible to a challenge as spot zoning under a two-pronged test where a court would invalidate the zoning if:

1. Land has been singled out for treatment different from that accorded to similar, surrounding land, and
2. The zoning classification is for the benefit of the individual owner and not for any public purpose.

The Board first noted that only lots within 500' radius of the Silver Hill train stop and south of train stop would qualify for TOSD uses; lots to the north of the train stop would not qualify due to their proximity to streams. Lots at both the Hastings and Kendal Green stops would not qualify at all due to their proximity to streams. Within those lots near Silver Hill, the Board noted that the bylaw provision which prohibited TOSD uses within ½ mile of another TOSD, would mean that only the 255 Merriam/ 11 Hallet Hill lot would qualify for a TOSD use. With only one parcel allowed a TOSD use, the Board found that this land was being singled out for different treatment from similar surrounding land.

Town Counsel noted that the bylaw amendment referred to a public purpose of providing senior housing. The applicants noted that this purpose is stated in both the Town's Housing Production Plan and in the [Community Needs Assessment](#) done by the Council on Aging. Town Counsel, however, also noted that given the particular facts of this proposed zoning amendment, namely that it stems from a mediated settlement between the neighborhood and a 40B developer and is specifically intended to circumvent the G.L. c.40B requirements for construction of affordable units, a court may find that the stated public purpose of advancing senior housing may be a pretext instead of truly advancing a legitimate public purpose.

Beyond the legal test, the Board was concerned with the practice of spot zoning as good policy. In particular, the Board asked that if a transit oriented senior development was needed, why create a situation where it could only happen once, and why focus it on a train stop that has been discussed by the MBTA for removal and consolidation? Further, none of the train stops in Weston are handicap accessible. The logical station to be upgraded for accessibility would be Kendal Green. The MBTA [Focus 40 plan](#), which guides its infrastructure investments, recommends surveying all stations for accessibility upgrades but also has a focus on "gateway cities," such as Waltham.

Geoff Engler of SEB, the 255 Merriam/ 11 Hallet Hill developer, stated that they would not be opposed if the town wanted to remove the transit-oriented clause of the bylaw amendment and broaden the applicability of the bylaw to "senior developments." Such a broad change to the town zoning, however, should be carefully studied for, amongst other concerns, its effectiveness in delivering senior housing at needed price points, and the ability of the town's infrastructure to absorb additional density.

Affordable Housing: Providing affordable housing, with an immediate goal of achieving 10% of units included on the SHI, has been a Town policy priority for years. Many neighborhoods are currently wrestling with proposed projects of 150 units or more. The TOSD not only adds to our permanent housing inventory, increasing the number of units needed to achieve 10%, but it also fails to include any affordable units and is, therefore, contrary to Town policy.

Senior Housing Need: While there is a documented need for senior housing, the Board was concerned as to how well the housing prescribed by this particular amendment would fill that need. The housing size is capped in the bylaw at 3,300 sf. The Board expressed concern that the size was larger than what would be needed for a downsizing senior(s). The Community Needs Assessment speaks to needing a variety of housing, and this particular project can provide one type. A bylaw aimed at meeting the need for senior housing would need to provide a broader spectrum of housing types and more than one eight-unit development

The Board was similarly concerned about the cost of the housing. A relatively small market-priced unit would likely meet one of many types of senior housing needs. Since the bylaw has no provision for pricing, there could be no guarantee on the eventual price of these units. A bylaw aimed at meeting the senior housing need would provide for more price points and would include a consideration for some number of permanently affordable housing units.

Historic Preservation: The Board noted that while the plan for the 255 Merriam/ 11 Hallet Hill TOSD is to keep and reuse the historic house and barn, there is no process outlined in the bylaw for review by the Historic Commission nor inclusion of plans for the execution of permanent preservation restrictions consistent with the stated intent of the design guidelines in the proposed bylaw amendment.

Special Permit/ Site Plan Approval: At the November 6th hearing, the applicants proposed amending the article to require a Special Permit from the Planning Board over Site Plan Approval as part of the required permits for the TOSD use. The inclusion of a discretionary permit possibly addresses a concern raised in review of the amendment, but without a draft of the amendment with the Special Permit language included, the mechanics of how the permit would function with the criteria outlined for Site Plan Approval would need to be tested and resolved. Will the special permit review criteria be the same as those in other sections of the current Zoning Bylaw, or a specific set of review criteria for the TOSD itself? As they initially proposed site plan approval, it was a limited scope site plan review. If there are limited scope special permit review criteria as well, even if it is called a “special permit,” the amount of discretion given the SPGA could be severely constrained if they create such narrow review criteria that a denial could be easily challenged as arbitrary and capricious.

Other Concerns: In addition to the larger legal and policy-related concerns above, the Board did note the following technical concerns:

- The 3,300 sf unit maximum needs to be further defined as to what spaces are included and excluded. As an example, the Residential Gross Floor Area (RGFA) includes garages, whereas the living area metric, used by the Assessor’s office, does not include garages.
- The Board noted that two parking spaces are required for each unit and that this minimum was inconsistent with a transit-oriented development.
- The bylaw states that Town water will be used for the TOSD, and with no stated exceptions, this provision would apply to irrigation water; However, the Board’s practice

is to require irrigation water to be provided by well, or means other than Town/ MWRA water. Requiring town/MWRA water for irrigation would be inconsistent with sustainable development principles and Board policy.

- Building Height – the TOSD caps building height at 32.5’ which is below the current zoning bylaw maximum for sloped roofs, 37’; However, this is above the maximum for flat roofs, 32’. The inconsistency created by this bylaw needs to be resolved.

The Board found that adoption of the bylaw would set an unacceptable precedent of using zoning bylaw amendments applicable to only one parcel to advance very specific purposes. In consideration of this and the above factors, the Board found that the adoption of the bylaw amendment would be inconsistent with good planning practice and legally tenuous

On November 12, 2019 the Board voted 3-0, with two recusals, to recommend denial of the proposed article.