

Planning Board's
Recommendation
On
Article 2
("Institutional/Commercial Development")

The Planning Board by majority vote of members Jackson, Whiteside and Innes, with members Lynch and Duffy opposed, recommend that the Town Meeting should adopt Article 2 ("Institutional/Commercial Development" zoning) with the amendments which are attached as Exhibit A.

2009 Warrant Article. At the May 2009 Town Meeting Article 49 on the Warrant concerned a proposed "Blue Hill Avenue Institutional/Business Overlay District". This article appeared on the warrant as a result of a citizen's petition. The apparent reason for the article was the precarious financial condition of Temple Shalom, a synagogue with a large out-dated, building on a lot of about 4 acres at 180 Blue Hill Avenue. Temple Shalom had made known that it could not continue to exist in its current financial condition and would be forced to close without a significant financial infusion. If Temple Shalom were to close, a tenant, the Campbell School, would have to relocate or also close.

The 2009 warrant article proposed that large lots owned by financially distressed institutions on state highways in Residence C districts be made available for planned unit development ("PUD") permitting certain commercial development in conjunction with new institutional buildings. Temple Shalom is located on Blue Hill Avenue, a state highway numbered Route 138. A state highway is a highway owned, maintained and operated by the state.

Prior Planning Board Recommendation. After extensive hearings on this warrant article, the Planning Board concluded that it could not recommend approval of the article as written and recommended that the question of establishing PUDs on certain institutionally owned lots, most specifically Temple Shalom's lot, should be sent to the Planning Board for study and a report back to Town meeting. Town Meeting followed this recommendation and sent the matter to the Planning Board for study and a report.

Study of the Question. During the summer of 2009 the Planning Board conducted numerous meetings to consider whether development options in addition to development authorized by the current zoning should be available to non-profit tax-exempt institutions in a Residence C districts which have large functionally obsolete buildings they no longer can afford but which have lots on state highways large enough for smaller institutional buildings together with additional taxable development.

The Comprehensive Permit Law. In considering whether additional development options should be made available under such circumstances the Planning Board was aware of G.L.c. 40B Sections 20-23 (the “Comprehensive Permit Law” or “40B”). The Comprehensive Permit Law provides that in a city or town with less than ten percent “low or moderate income housing” (i.e., housing subsidized by the state or federal government under a law or moderate income housing program), a developer can seek a “comprehensive permit” to build a low or moderate income housing development without regard to local zoning provisions which would otherwise prohibit such a housing development.

40B Development. A consultant to the Planning Board (LDS Consulting Group, LLC) advised that financing currently exists for low or moderate income rental housing to be developed under a comprehensive permit. Several developers of low or moderate income housing indicated to the consultant that for a 4 acre site a rental housing development with between 80 and 120 units would be a likely comprehensive permit project. For such a development a developer could be anticipated to pay roughly \$30,000 per unit in land acquisition costs.

A 40B development of 80-120 units could be anticipated as including three four-story apartment buildings and associated parking. 25% of the units would be reserved for households with incomes less than 80% of the median income in the greater Boston area.

40B Limitations on a Town’s Role. The Town’s ability to shape the size, shape and design of such a development would be limited. There are significant constraints in the comprehensive permit process limiting the ability of zoning boards of appeals to impose conditions and to require changes in developers’ proposals after they have been given determinations of project eligibility by state or federal agencies. The imposition of major conditions or changes by a ZBA over a developer’s objections often results

in an appeal to the state's Housing Appeals Committee. The Committee often finds municipal concerns expressed in such conditions or changes to be outweighed by the regional need for low or moderate income housing.

Developers' Profits. In the usual case development of a lot will be underlain by profit considerations. A developer who projects the most profit on a certain type of development is likely to be willing to pay more for the lot than a developer who projects lesser profit on a different type of development.

Little Profit for Single Family Housing. In a Residence C district the zoning permits development of single family houses on 7,500 square foot lots. Currently, there is little single family housing development being undertaken and financing for such development is not readily available. A developer under current conditions would not be likely to pay a high price for land to develop single family housing, especially for lots requiring extensive site preparation as, for example, would the Temple Shalom lot.

Little Profit Under Other Allowable Uses. Milton's zoning, in addition to single family housing, permits the following uses (some requiring a special permit) on a lot in a Residence district: buildings for religious or educational purposes, municipal buildings, private non-profit clubs, buildings for public utilities or public communications, and buildings for nonprofit charitable or nonprofit philanthropic use. The Planning Board was unable to determine that there likely would be purchasers for lots to be used for any of these uses at a price competitive with the anticipated price for 40B housing.

40B Rental Housing Is the Likely Use. The Planning Board majority concluded that under current conditions in the event that a non-profit tax-exempt institution must sell a large lot with good access and infrastructure but with a functionally obsolete building which the institution cannot afford to maintain and operate, the most likely purchaser would be a developer intending to secure a comprehensive permit to build residential rental units. Such a rental development would likely contain between 80 and 120 apartments. The state or federal subsidizing agency would likely require a number of units to contain 3 or more bedrooms suitable for families with children.

40B Impacts. A rental apartment development with 80 to 120 units would have significant impacts on its host neighborhood. There would be increased traffic and noise. There would also be visual impacts and issues of security. How these matters might be addressed in a comprehensive permit is not possible to predict, but the financing of the project would likely limit substantial expenditures for mitigation of these adverse impacts.

40B Uncertainties. There are other significant uncertainties respecting 40 B developments. The rules of communities in their zoning and local regulations may all be set aside by the permit-granting authority. What a developer wants to build is often a more important consideration than what the town would like to have built. Mitigation of impacts will often depend on cost and money available; expenses for mitigation pushing costs beyond budget are not likely to be required. The quantity, quality and appearance of what is built can vary widely depending on the developer's preferences. Some 40 B development lacks good design and does not fit either its site or its neighborhood well. Such development is not a welcome neighbor.

Beyond all the uncertainties of what a particular 40 B development might be, there is an additional uncertainty as to the law itself a statewide initiative petition repealing the Comprehensive Permit Law will likely be on next November's ballot unless the Legislature takes some prior action. If on the ballot, very significant amounts of money will be spent by affordable housing developers and advocates in order to save the law. Those opposing the law may have less to spend. The outcome or its application to pending cases is by no means certain.

Uncertainty Is Not Desirable. Uncertainty regarding 40 B developments and regarding the law itself makes it impossible to formulate an accurate assessment as to what would likely be specific consequences if a local non-profit were forced to close and sell its land to the highest bidder. Such uncertainty is in no one's interest. Beyond the uncertainty, loss of the non-profit would likely diminish the community of which it is part. Much of the high quality of Milton as a place to live is attributable to the many non-profit institutions in town and their contributions to the community. For example Temple Shalom has been a vibrant part of the town for more than 60 years and has not only been at the center of the Jewish community in Milton but also has positively affected other residents, providing forums, sponsoring activities and exercising leadership. Its presence has significantly benefited the town. In recent years Temple Shalom has provided facilities

for the Campbell School, an excellent preschool serving many preschoolers in the area. If Temple Shalom were forced to close, it would be a significant loss for the Town.

Possible Residential Zoning Overlays. In view of all the foregoing circumstances the Planning Board majority considered it prudent to consider possible zoning overlays which could steer future development of large sites owned by endangered nonprofits in the Residence C district in a manner which would benefit the non-profit, the neighborhood and the Town and which would be subject to strict control by the Town. The Board considered a variety of residential options with a density significantly greater than the density permitted by Residence C zoning but significantly less than the likely density of a 40B apartment development. Several of these residential options, involving garden apartments or townhouses, could have resulted in attractive, moderate density projects, but they suffered from the substantial flaw that financing for such projects is not currently available in today's depressed real estate market.

Possible Commercial Zoning Overlays. Since residential development other than under 40B seemed unlikely even with new residential zoning, the Planning Board majority then looked at possible commercial development. One type of commercial development for which financing is currently available is development in which the anchor tenant is a pharmacy.

The land acquisition cost for such a commercial development could be significantly higher than what a developer could reasonably justify for 40B development. The sale price for a large lot on a state highway could make it possible for the financially ailing non-profit owner to relocate to a new smaller building and share the site with commercial development anchored by a pharmacy.

The Development Model. During the Planning Board meetings, a theoretical development model involving the Temple Shalom site was created. This development model involved a pharmacy, a neighborhood - focused market and a relocated institution. The development model offered benefits to the neighborhood and the Town, including preservation of Temple Shalom and the Campbell School, shopping convenience in an attractive setting, a place for neighborhood residents to meet informally, some employment opportunities for neighborhood youth, and new tax

revenues in excess of \$150,000. The question then arose whether the benefits of such a project would be outweighed by adverse impacts on the neighborhood.

The Benefits Outweigh the Impacts. The Planning Board majority determined that the answer to this critical question was that the benefits of a properly designed project would outweigh the adverse impacts because a special permit process could be designed to ensure that there would be quality development with no adverse impacts.

The Special Permit Process Is Exacting. The proposed zoning was written to ensure against adverse impacts while guaranteeing an attractive, functional and useful commercial development and revitalized institution. The zoning proposed in Article 2 requires that before any Institutional/Commercial development can occur the Planning Board by vote of at least 4 of its 5 members must issue a special permit authorizing the development. The special permit process would be an exacting public process with a full opportunity for interested persons to participate.

In this special permit process the Planning Board is required to ensure that any development must meet all the strict design and use standards specified in the zoning. These requirements include those in Paragraph 3(e) where there is a specific requirement that any potential adverse detrimental impacts from increased traffic caused by the development must be mitigated by appropriate effective measures; in Paragraph 3 (f) which requires that there must be effective noise control; in Paragraph 3 (g) which prohibits any development likely to cause a decrease in values of real property in the host neighborhood; and in Paragraph 3(d) which prohibits significant light overspill into areas surrounding the development and which requires a security system developed in conjunction with the police department. Moreover, beyond these specific requirements, the Planning Board is required to apply the general standard in Section IX.C which prohibits detriment to the public good and requires appropriate conditions and limitations safe-guarding the neighborhood.

The Development Model Is Not an Approved Plan. It should be noted that the development model produced for the Temple Shalom lot is not an approved plan and has not undergone the rigors of the special permit process. However, the plan has been much discussed and revised to address issues raised during the Planning Board meetings, and it represents fairly

advanced planning for a project which could be build on the Temple Shalom site under the zoning. The fact that this plan has already been subjected to significant public scrutiny would likely be to its advantage on an application for a special permit when it would undergo further scrutiny required by the special permit planning process.

The Planning Board's Responsibilities. The proposed zoning puts a weighty responsibility on the Planning Board to conduct a full and fair hearing on any application for a special permit for institutional/commercial development and to ensure that any permit contains all necessary provisions to carry out the mandates of the zoning and other appropriate requirements. The Planning Board believes that it can and will discharge this responsibility effectively with the result that any institutional/commercial development will be a credit to its host community and cause no adverse impacts.

The Zoning Does Not Violate Good Planning Practices. The presence of a small well designed commercial and institutional development in a residential neighborhood does not contravene good planning practices. Before the advent of the automobile commercial areas were located so as to be readily accessible by foot from adjoining residential areas. More recently the idea of introducing residential development into commercial areas has been seen as a means of revitalization. In such mixed-use areas the residential units are often very desirable places to live. For example, Milton Landing is a mixed-use development with high quality commercial and residential elements. Principles of smart growth also advocate development in areas with good transportation and nearby institutions and businesses to serve residents.

Milton's Commercial Tax Base. Milton has a very small area currently zoned for business. There has been considerable public sentiment expressed for the Town to develop a larger commercial tax base. If this is to happen, it inevitably will involve introduction of appropriate commercial development into what are now residentially zoned areas. The Planning Board majority believes that such commercial activity can be introduced into residential areas if the development is carefully planned, designed, sited, built and operated. The Planning Board majority believes that the proposed zoning will ensure such a result for any approved project.

Conclusion and Recommendation for Approval. Accordingly, the Planning Board majority recommends that Town Meeting approve Article 2.

EXHIBIT A

Proposed Amendments to Proposed Subsection L

1. Paragraph 1 Subparagraph (j) ("Property Values Analysis") is stricken and the following Subparagraph (j) is substituted:

“(j) Property Values Analysis. A reliable analysis prepared by a licensed Massachusetts real estate appraiser as to the effect that the proposed institutional/commercial development will have had on real estate property values at the one year anniversary of completion of construction. The analysis shall employ generally accepted appraisal techniques and methodology in reliably determining the likely impact which the development would have on real estate property values in the vicinity (including but not limited to all property within 500 feet of a lot line) of the development at such time. In the event that the analysis projects a decrease of real estate property values attributable to the development, then the analysis shall identify measures that can be taken to negate this impact.”

2. Paragraph 3 Subparagraph (g) ("Property Values") is stricken and the following Subparagraph (g) is substituted:

“(g) Property Values. The Planning Board shall not issue a special permit for institutional/commercial development if it shall find that a proposed institutional/commercial development will likely cause a decrease in values of real property in the vicinity of the development at the one year anniversary of completion

of construction unless the Planning Board shall provide for effective and adequate measures to negate such impacts in the special permit.”

3. Paragraph 5 is amended by inserting the following sentence after the fourth sentence:

“The real estate appraiser hired by the Planning Board shall analyze the property values analysis submitted by applicant and shall determine whether its methodology is reliable, whether its assumptions are sound and whether its conclusions are supported, and, unless the appraiser concurs in applicant’s appraiser’s analysis, the appraiser shall offer an independent, reliable analysis as to the likely impact of the development on real estate property values in the vicinity of the development at the one year anniversary of completion of construction.”

4. Paragraph 3 is amended by adding the following Subparagraph (j):

“(j) In the event that implementation of one or more requirements of the special permit is subject to federal, state, or local approvals, separate from the special permit (such as, but not limited to, modification of streets, regulation of traffic on such streets, and installation of on-site signs), such separate approvals shall be secured by the applicant prior to commencement of any construction.”

5. Paragraph I is amended by adding the following Subparagraph (I):- “In the event that earth materials removal and/or deposit of fill are proposed for which a

- permit is required by Section IV A, the application materials specified in Section IV A. 1 and/or 3.”
6. Paragraph 3 is amended by adding the following Subparagraph (k):- “(k) Earth Materials Removal or Deposit of Fill. In the event that earth materials removal or deposit of fill is proposed for which a permit is required by Section IV A, the Planning Board shall be the permit-granting authority. The application for a permit under Section IV A shall be a part of the application for a special permit for Institutional/Commercial Development and shall be heard and decided by the Planning Board as a part thereof in accordance with the requirements of Section IV A.”
7. Paragraph 1 is amended by substituting the following for the word “land” in Subparagraph (a):- “lot, including (if practicable) abutting areas within 10 feet,”

Planning Board Report

Blue Hill Avenue Institutional/Commercial Development Overlay District

At the May 2009 ATM the Meeting referred Article 49, a citizen's petition for rezoning the Temple Shalom site on Blue Hill Avenue, to the Planning Board for further study. The Planning Board took that charge very seriously and conducted a thorough, open process with unlimited opportunity for public input.

In consultation with the Board of Selectmen the Planning Board established an Advisory Committee to help us study the issues, develop and analyze alternatives ideas, consider potential impacts and how they might be mitigated. We heard testimony from several experts in real estate and development to consider the market and feasibility for various uses.

We evaluated a broad range of optional uses, mixes of uses, and types and density of housing options. These uses included retail commercial, office space, pharmacy, senior housing, assisted living, and a variety of ownership and rental housing. This analysis resulted in identifying two alternatives that were felt to be feasible in today's economy. They include a commercial development that includes a pharmacy, and high density affordable rental apartments developed under the Comprehensive Permit Law or Chapter 40B.

The Comprehensive Permit Law (G.L.c. 40B Sections 20-23) provides that in a city or town with less than ten percent low or moderate income housing" (i.e., housing subsidized by the state or federal government under a law or moderate income housing program), a developer can seek a "comprehensive permit" to build a low or moderate income housing development without regard to local zoning provisions which would otherwise prohibit such a housing development. Our real estate consultant LDS Consulting advised us that the state would likely approve a development of 80-120 units under a 40B permit.

A rental apartment development with 80 to 120 units would have significant impacts on its host neighborhood. There would be increased traffic and noise. There would also be visual impacts and issues of security. How these matters might be addressed in a comprehensive permit is not possible to predict, but the financing of the project would likely limit substantial expenditures for mitigation of these adverse impacts.

There are other significant uncertainties respecting 40 B developments. The rules of communities in their zoning and local regulations may all be set aside by the permit-granting authority. What a developer wants to build is often a more important consideration than what the town would like to have built. Mitigation of

impacts will often depend on cost and money available; expenses for mitigation pushing costs beyond budget are not likely to be required. The quantity, quality and appearance of what is built can vary widely depending on the developer's preferences. Some 40 B developments lack good design and do not fit either their site or neighborhood well. Such development is not a welcome neighbor.

During the Planning Board meetings, a theoretical development model involving the Temple Shalom site was created. This development model involved a pharmacy, a neighborhood-focused market and a relocated institution. The development model offered benefits to the neighborhood and the Town, including preservation of Temple Shalom and the Campbell School, shopping convenience in an attractive setting, a place for neighborhood residents to meet informally, some employment opportunities for neighborhood youth, and new tax revenues in excess of \$150,000. The question then arose whether the benefits of such a project would be outweighed by adverse impacts on the neighborhood.

Neighbors helped the Planning Board identify potential impacts including construction operations, traffic, noise, safety, lighting, property values, and visual impacts. We feel that the bylaw as written provides the mechanism to identify and mitigate each of these impacts as part of the Special Permit process. We required a Traffic Impact Analysis and an independent peer review by a qualified traffic engineers to be available prior to the Special Town Meeting in February. The potential for traffic impacts remain concern of neighbors and the Planning Board and significant additional analysis and review will be part of the Special Permit process. The Planning Board is confident that, based on the findings of the Traffic Impact Analysis, these impacts will be able to be mitigated through proper traffic engineering and a comprehensive plan for traffic calming on neighborhood streets.

The presence of a small well designed commercial and institutional development in a residential neighborhood does not contravene good planning practices. Before the advent of the automobile commercial areas were located so as to be readily accessible by foot from adjoining residential areas. More recently the idea of introducing mixed residential and commercial development areas has been seen as a means of revitalization. In such mixed use areas the residential units are often very desirable places to live. For example, Milton Landing is a mixed use development with high quality commercial and residential elements. Principles of smart growth advocate development in areas with good transportation and nearby institutions and businesses to serve residents.

The Planning Board feels the zoning bylaw will help preserve two valued community institutions, Temple Shalom and the Campbell School. It will enhance the neighborhood, eliminate or mitigate potential impacts to the neighborhood, and allow significant quality control over design, construction, and operation. We feel

that the proposed project provides the town a much greater level of control over the future development of the site than the likely alternative, a high density rental housing project developed under Section 40B.

The proposed zoning puts a weighty responsibility on the Planning Board to conduct a full and fair hearing on any application for a special permit for institutional/commercial development and to ensure that any permit contains all necessary provisions to carry out the mandates of the zoning and other appropriate requirements. The Planning Board believes that it can and will discharge this responsibility effectively with the result that any institutional/commercial development will be a credit to its host community and cause no adverse impacts

Based on consideration of all the factors discussed, the majority of the Planning Board believes that the adoption of the proposed Institutional/Commercial Development bylaw is in the best interest of the town and we recommend adoption of the proposed zoning.