

Marion Planning Board Neighborhood Overlay District (NOD) Bylaw

Questions and Answers

1. What is an overlay district?

An overlay district is an area that sits above the current zoning that has special zoning considerations. Overlays may be anything from aquifer protection areas to special tax incentive enterprise zones. They essentially are a second layer of zoning that can both add restrictions on the underlying zoning or expand the rights of the underlying zoning.

2. Where is the Neighborhood Overlay District?

The Neighborhood Overlay District (NOD) is an area bounded by Spring Street, Rte. 105 and Route 6, consisting of roughly 33 acres of property immediately abutting these roads. The NOD primarily overlays a General Business zone. The purpose of the NOD is to enable the Town of Marion to direct and accommodate growth that would otherwise not be allowed under Marion zoning in as much as such development provides significant benefit to the Town.

3. Why are we proposing the NOD?

In the 1996 Growth Management Report we realized that we would need to accommodate growth in order to meet the needs of the Town in the future. We realized that the size and topography of Marion would not allow us to develop an industrial zone. Four “nodes” were identified for potential growth under a “Smart Growth” approach. (Essentially, this is to allow greater density at more central locations as an alternative to sprawl subdivisions, saving significant dollars in public services and accommodating a greater community and quality of life setting, affordability and mixed use.)

In 2004 Marion consulted Mr. Randall Arendt, author of Rural by Design, a renowned resource for helping communities retain their rural village character while enabling growth. Mr. Arendt made many suggestions and helped us identify how we could go about such an effort, particularly in the NOD area.

Marion Planning Board Neighborhood Overlay District (NOD) Bylaw

Questions and Answers

Marion's 2015 Committee further echoed the value of such a plan.

The Baywatch 40B has also provided us significant incentive to get ahead of MGL 40B. While the housing market has slowed, Marion must get ahead of our 40B deficit – or risk further unfriendly projects in the future.

Ultimately, the NOD is to give us the flexibility to achieve control of our future.

4. What are the specifics of the NOD Bylaw?

The NOD retains all current Marion bylaw requirements, while accommodating, under the significant considerations required of a special permit, additional flexibility of the following;

- a. In order to be considered for this flexibility the project must be 1 acre or more in size (Limits to 4 parcels currently)
- b. Side yard or rear yard setbacks may be eliminated in some cases, such as a case where greater affordability can be achieved if we were to allow a common wall – like at the Cove.
- c. Front yard setbacks may be right up to the sidewalk (street layout) in some cases where significant benefit to the Town is achieved.

5. How is the character of Marion protected?

There are three levels of protection under the Marion bylaw and now under the NOD. In order for any Special Permit to be approved 5 of the 7 Members of the Marion Planning Board must believe that the application meets the following considerations.

The first is that Special Permits must meet the current Section 7.2:

7.2 General Requirements. Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in

Marion Planning Board Neighborhood Overlay District (NOD) Bylaw

Questions and Answers

view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this bylaw, the determination shall include consideration of each of the following:

1. Social, economic or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and
6. Potential fiscal impact, including impact on town services, tax base, and employment.

Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use as the Special Permit Granting Authority may deem necessary to serve the purposes of this By-Law. Special permits shall lapse twenty-four (24) months following final action (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) if a substantial use thereof has not commenced nor construction begun, except for good cause.

The second is the new considerations under the NOD bylaw itself:

5.11. The Planning Board may grant a special permit for a use(s) or structure(s) with zero lot line setbacks where the Planning Board concludes, in its sole judgment, that such construction will help preserve open space, the aesthetic and visual design characteristics of the neighborhood and/or structures, will promote pedestrian and vehicular circulation and otherwise lead to an environmentally sensitive and appropriate development, and promote and protect public health and safety.

Therefore, in order to exceed the “by right” limitations of the Marion Bylaw, an application must seek to bring significant benefit to the town in areas such as affordability (Currently a minimum 10% is required for 6 or more units), open space (opening up the consideration of both integrated

Marion Planning Board Neighborhood Overlay District (NOD) Bylaw

Questions and Answers

open space and open space contributions for elsewhere), open public access and egress, shared driveways/curb cuts, and more...

6. How can we be sure that the flexibility of the bylaw will not be abused?

The hurdle of a supermajority of the Planning Board (5 of 7 Members approving) is quite significant. Unlike many commercial building applications, where health and safety issues are the only real factors that can stop the development, the applications are for things that are not allowed “by right” and therefore give the Planning Board much greater power to shape them and to absolutely ensure that they truly bring the benefits that we are seeking.

Ultimately, however, it is up to each of us to vote for people who will stand up for the goals of our Town.

7. Why not limit approval of any project to Town Meeting instead of entrusting this to the Planning Board?

Town Meeting approval is a time-consuming and significant process. It requires that a significant amount of money must be spent by an applicant without any degree of certainty that the project will go ahead. Under the current 40B regulations, an applicant has a much greater confidence that their project will move ahead in most towns. The risk we run, without such flexibility under the bylaw or the hurdle of Town Meeting, is that we may not be able to achieve a project that best suits our needs and goals, but rather is taken out of our hands.

The hurdle to achieve a Special Permit is not insignificant, but it is our belief that a developer would not wish to go “hostile” under 40B, but rather produce a project that we can all agree to.

8. What is anticipated as likely under this bylaw in the next ten years?

Marion Planning Board Neighborhood Overlay District (NOD) Bylaw

Questions and Answers

Currently, 4 lots meet the 1 acre minimum that are either undeveloped, or have any potential for redevelopment.

Of these 4, one faces Route 6 and would not truly be appropriate for significant development until such time as we can change Route 6 in this area. The speeds shown in the area during the Dunkin Donuts application process showed speeds well in excess of the posted speed limit, the average speed being significantly higher, and the highest speeds very alarming.

Another of these, formerly Sippican Hardware/Maggie's Ice Cream, was close to a project that could come under this bylaw before the application was withdrawn. We hear that this one may come back. We are likely to see, with significant affordability, 3 to 5 units on this 1.1 acre site, with some level of mixed use.

A concept plan for Phase 2 of the Baldwin Brothers building has been discussed with as many as 6 units per acre and mixed use. (This concept will be covered in the presentation.)

The last property, the northern of Route 6 and 105 intersection, has not expressed an interest thus far in development.

We estimate as many as 60 residential units with a 16 affordable units over the next 10 years.

9. How will we handle the water and sewer?

No building permits may ever be issued without the approval for water and sewer by the Marion Water and Sewer Commissioners (Board of Selectmen), who have a very conservative policy for new connections. If they do not feel we have adequate supply of either water or sewer, the project cannot move ahead.

10. How will this affect Marion's Village Center?

Some have expressed the sentiment that development in the 6/105 area would mark a shift from the Village Center to this area. It is the belief

Marion Planning Board Neighborhood Overlay District (NOD) Bylaw

Questions and Answers

of the Marion Planning Board that these areas will not compete, but complement one another. As the “highest value” use continues to be housing, Marion Village will not likely see more commercial development within the Village Center. The result of the reduced business activity will continue to be felt in the challenges our Village businesses face. In as much as successful development will attract more consumers from areas of Town that may well travel to Mattapoisett or Wareham today, this will make doing business in the Village Center more convenient and attractive. We do not see anyone choosing only the 6/105 area when the Village Center is so close.

Additionally, most commercial uses require a special permit and the goal of the Planning Board is to enhance our Town, not to simply enable any form of cannibalization. The new businesses must also meet the Special Permit requirements of Section 7.2 above.