

# CITY OF NEWBURYPORT



IN CITY COUNCIL

**ORDERED:**

July 15, 2019

## **AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF NEWBURYPORT**

Be it ordained by the City Council of the City of Newburyport as follows:

### ***Zoning Ordinance Amendment:***

**THAT** the Zoning Ordinance of the City of Newburyport be amended pursuant to Section XII-B "Adoption and Amendment" as follows:

### **Section XXIV: Waterfront West Overlay District (WWOD)**

Delete Section XXIV, entitled "Waterfront West Overlay District (WWOD) – Special Permit" in its entirety and replace said Section with the following:

### **SECTION XXIV. - WATERFRONT WEST OVERLAY DISTRICT (WWOD)**

#### **XXIV-A - Purpose.**

A Waterfront West Overlay District (WWOD) is hereby established, due to the unique land use, historic, cultural and architectural resources of the properties located along the central waterfront of the City of Newburyport, to encourage implementation of the recommendations of the 2003 Waterfront Strategic Plan, 2017 Master Plan, and the January 28, 2019 Report submitted to the City Council by its Ad Hoc Committee on Waterfront West, as they are amended and supplemented from time to time. Such recommendations include:

1. Encourage a building pattern, scale, setbacks, height, density, and design conforming to that now found in the historic downtown business district;
2. Encourage a pattern of building development similar to the existing downtown by eliminating excessive yard setback requirements, and increasing the percentage of a lot area that can be covered by a building;
3. Encourage mixed-use buildings with commercial uses on the ground floor and housing and/or offices above;

4. Promote a lively, mixed-use waterfront district that will serve Newburyport's citizens and visitors with ample public space and intimately scaled streets and public pedestrian ways with key views to the river from Merrimac Street;
5. Maintain and protect marine-dependent uses consistent with the requirements of Chapter 91 of the Massachusetts General Laws;
6. Diminish the visual impact of the parked car by discouraging expansive surface parking lots and encouraging structured parking;
7. Encourage shared-parking strategies in mixed-use projects to diminish overall parking requirements;
8. Provide incentives to construct pedestrian ways to the water such as pedestrian alleys, sidewalks, squares, and other public open spaces;
9. Protect the architectural, cultural, economic, and cultural heritage of Newburyport's urban waterfront through preservation and adaptive reuse of existing historic structures;
10. Encourage affordable housing within an overall density that is generally consistent with the Zoning Ordinance and the downtown districts; and
11. Promote creative, efficient, and appropriate solutions for the development of complex sites, and facilitate the development of a mix of complementary land uses, including both residential and nonresidential development, that will address City and regional interests, including in the form of additional employment, housing, and tax revenue.

#### **XXIV-B - Establishment.**

The WWOD is hereby established as an overlay district as shown on the City's zoning map, which is superimposed over, rather than replacing, the applicable underlying zoning district(s). The Master Development Plan (MDP) and Building Layout and Architectural Review (BLAR) procedures are hereby established to effectuate the purposes of this Section XXIV.

Within the WWOD, the provisions of the underlying zoning district shall remain in full force and effect except with respect to land where a WWOD Project (as defined herein) is to be developed pursuant to an approved MDP and associated BLAR Approval(s) (as defined herein) pursuant to this Section XXIV, in which case the provisions of this Section XXIV shall apply, and shall supersede contrary provisions of the applicable underlying zoning district(s), but all other regulations of the underlying zoning district(s) shall apply except to the extent that they are inconsistent with, supplemented by, or modified by the provisions of this Section XXIV. In the event of any conflict or inconsistency between the other provisions of this Zoning Ordinance and this Section XXIV, the provisions of this Section XXIV shall prevail. Special permit and similar approvals/criteria otherwise required under this Zoning Ordinance shall not be required for a WWOD Project, including, without limitation, any such approvals/criteria required pursuant to Section XIII (Floodplain Overlay District); Section XV (Site Plan Review); and/or Section XIX (Water Resources Protection District) where said WWOD Project is undertaken pursuant to a MDP approved by the City Council under this Section XXIV.

The requirements of this Section XXIV shall not apply to any existing building(s) within the WWOD unless such building(s) are included in the area subject to an approved MDP, and such existing buildings and the existing use(s) thereof shall be treated as legally nonconforming uses and structures in accordance with Section IX (Nonconforming Uses, Structures and Lots) of this Zoning Ordinance.

Development authorized under an approved MDP, a so-called "WWOD Project," may be constructed in phases (each, a "WWOD Project Phase"), consistent with the Phasing Plan approved by the City Council in connection with the applicable MDP and subject to Planning Board review under Section XXIV-H below. The

applicant may elect to consolidate authorized phases, and/or undertake the entire WWOD Project as a single WWOD Project Phase. Changes to the Phasing Plan may be approved by the Office of Planning and Development at its sole discretion upon an administrative determination that the proposed change is consistent with this Section XXIV. Upon such a determination, a building permit for the affected phase(s) may issue in accordance with Section XXIV-H. If the Office of Planning and Development determines that a proposed change to the Phasing Plan constitutes a material modification of the approved MDP or Phasing Plan approved thereunder, then the proposed change shall require approval in accordance with Section XXIV-F(3) and a building permit may thereafter issue for the affected phase(s). Upon the granting of administrative approval or such other approval as may be required by Sections XXIV-F(3), the affected phase(s) shall be deemed to be in compliance with the requirements of this Section XXIV at the time such finding is made, notwithstanding the status of any other phase of the development.

Subsequent to issuance of the first BLAR Approval for a WWOD Project, development of any or all lots included within the area of an approved Master Development Plan may only be pursued under other applicable underlying zoning and overlay districts, subject to receipt of approvals, if any, required under such other regulations, provided that the City Council votes by super-majority to so amend the MDP, pursuant to this Section XXIV. Under no circumstances shall the total area subject to a Master Development Plan as amended be less than four (4) acres.

#### **XXIV-C – Use requirements.**

The following use requirements set forth in this Section XXIV-C shall apply to all development subject to this Section XXIV, in place of other use requirements under this Zoning Ordinance.

##### **1. Permitted uses.**

- a. *By right uses:* The following uses may be permitted within a WWOD Project under a MDP approved by a two-thirds, super-majority vote of the City Council, without the approval of any other special permit granting authority:
  - i. Use #103. Multi-family (including attached or detached townhouses);
  - ii. Use #104. Multi-family, over twenty (20) units;
  - iii. Use #105. Hotel/inn (including with in-room kitchenettes);
  - iv. Use #108. Congregate elderly housing;
  - v. Use #215. Medical office building;
  - vi. Use #216. Community center;
  - vii. Use #402. Specialty shopping center (including if part of mixed use (#405));
  - viii. Use #403. Retail trade;
  - ix. Use #404. Retail services;
  - x. Use #405. Mixed use;
  - xi. Use #406. Health/recreation;
  - xii. Use #413B. Parking structure;
  - xiii. Use #414. Retail/service kiosk automated teller machine.

- xiv. Use #420. Theater assembly;
  - xv. Use #421. Meeting space;
  - xvi. Use #422. Neighborhood bakeries/delis;
  - xvii. Use #501. Restaurant;
  - xviii. Use #502. Fast food/carry out (carry-out of prepared food only) with no "drive-through" operations permitted;
  - xix. Use #503. Outdoor Café;
  - xx. Use #612. Corporate headquarters; and
  - xxi. [Additional uses currently permitted by right or by special permit in the Waterfront Mixed Use (WMU) Zoning District to be enumerated here, including, without limitation, water dependent uses.]
- b. Short-term rental residential uses: Short-term rental (i.e. for a period of no more than 29 calendar days) of any allowed residential use is allowed by-right within an approved WWOD Project, provided that such a short-term rental complies with any and all federal, state, and City laws regulating the same.

## 2. Accessory uses.

- a. Accessory uses generally: Any use that is incidental to, or customarily used in connection with, any principal use permitted within the area of the MDP shall be permitted as an accessory use, expressly excepting signs, which shall be regulated under subsection XXIV.D.7, below.
- b. Specific accessory uses: Without limiting the foregoing, the following accessory uses shall be permitted by right:
- i. Outdoor seating;
  - ii. Automated Teller Machines (ATMs) with no "drive-through" operations permitted;
  - iii. Employee housing;
  - iv. Enclosed storage;
  - v. Uses supporting principal Office uses, including, without limitation, health and fitness centers, restaurants/cafeterias, dry cleaner drop-off service, and small-scale retail stores;
  - vi. Uses supporting principal Hotel/Inn uses, including, without limitation, restaurants/cafeterias, dining rooms, bars and other places serving food or beverages; patio bars and other outdoor food services areas; theaters, halls, conference rooms, clubs, auditoriums and other places of amusement, assembly or meeting function purposes; health and fitness centers; small-scale retail stores and personal service shops (including dry cleaner drop-off service, florist kiosks, newsstands, hairstyling salons and barber shops); convenience stores; commercial or public parking lots and parking garages; and similar establishments and services of the same general character as the above; and

- vii. Accessory off-street parking, provided, however, that surface parking shall be located solely in those locations specified under an approved MDP.
- c. Off-site accessory (ancillary) uses: An accessory use may be located on a different lot from its associated principal use (an ancillary use), provided it is located within the same MDP area and such accessory use remains reasonably proximate to the principal use.
  - i. Ancillary parking: For purposes of this Section XXIV, ancillary parking spaces shall be deemed to be reasonably proximate to the principal use if such spaces are provided in accordance with Section XXIV-E of this Zoning Ordinance.
  - ii. Other ancillary uses: The location of an ancillary use on a different lot than the principal use, other than any accessory parking spaces provided as described above, shall require the Planning Board's determination, at an administrative meeting, that such accessory use is generally compatible with the surrounding WWOD Project and that such ancillary use is reasonably proximate to the principal use as determined by the Planning Board.

### 3. Prohibited uses.

Any other uses not expressly authorized in this section pursuant to a MDP approved by the City Council hereunder shall be prohibited.

### 4. Required mix of uses.

A Master Development Plan shall include a healthy mix of uses that support a vibrant mix of activities year-round, including, but not limited to, the following:

- a. Hotel/Inn use with a minimum of (50) guest rooms;
- b. Retail / Restaurant / Service uses, in a cumulative amount not less than 5,000 square feet nor more than 10,000 square feet of Gross Floor Area;
- c. Active ground-floor uses (*i.e.*, Facilities of Public Accommodation as defined under 310 CMR 9) shall be provided along main streets and anchor corners of buildings fronting along the Merrimack River, provided, however, that such uses are not required on the ground floor of secondary streets, where residential and screened parking and loading shall be allowed; and
- d. A public pedestrian circulation route paralleling the waterfront that is accessible and having a width of 10 to 12 feet on average, predominately following the Merrimack River shoreline.

### 5. Affordable housing.

- a. Affordable Housing: At least twelve percent (12%) of all dwelling units constructed in each WWOD Project Phase (if any), with fractional units rounded upward, shall be deed-restricted for low or moderate income households as defined under M.G.L.A. 40B, § 20 and 760 CMR 56. All such affordable housing units shall meet all of the requirements necessary for listing on the Massachusetts Subsidized Housing Inventory (SHI). Additionally, the applicant creating the affordable unit(s) shall comply with all DHCD regulations and guidelines for qualification of the housing units created, including but not limited to, eligible subsidy, the form of the affordable housing restriction and regulations concerning owner or tenant selection and affirmative fair marketing, unit design standards, housing costs, and income and other household and unit eligibility standards. The applicant shall cooperate with the City of Newburyport in good faith to qualify any restricted housing unit toward the city's affordable unit count on the SHI.
  - i. For purposes of this subsection XXIV-C(4), neither (A) Hotel/Inn use, nor (B) a Congregate Elderly Housing facility, nor (C) Nursing Home use shall be considered a



residential use, with the exception of any facilities specifically named in clauses (B) or (C) above that are independent dwelling units because they have independent kitchens and bathrooms or contain multiple independent dwelling units within one structure.

- ii. Affordable home ownership units shall be sold to eligible individuals or households with incomes at or below eighty percent (80%) of area median income (AMI), as defined in Section XXX-C(3) of this Zoning Ordinance. Affordable rental units shall be rented to eligible individuals or households with incomes at or below sixty percent (60%) of AMI. When an applicant provides at least one-half of the affordable units required by this Section XXIV-C(4), whether home ownership or rental, for individuals and families with incomes at or below fifty percent (50%) of AMI, the Planning Board through BLAR Approval may allow the remaining affordable units to be sold or rented to individuals or households with incomes up to one hundred percent (100%) of AMI.
- iii. To the extent that any WWOD Project Phase is required to provide deed-restricted affordable units under Section XXIV, said units shall be located (a) within the Master Development Plan area or (b) at the discretion of the Planning Board, at an off-site location within the City of Newburyport identified in the BLAR Approval for such phase.
- iv. So-called "Payments in lieu" of affordable housing production required by this Section are expressly prohibited.

#### **XXIV-D – Dimensional, sign, and other design and performance requirements.**

The following dimensional, sign, and other design and performance requirements set forth in this Section XXIV-D shall apply to all development subject to this Section XXIV, in place of other dimensional, sign, and other design and performance requirements under this Zoning Ordinance.

##### **1. Dimensional requirements.**

All use categories allowed in the WWOD shall comply with the following requirements as applied to the MDP area, notwithstanding the subdivision of such area into separate lots. The MDP area shall include the total land area that is subject to the MDP as approved by the City Council, and shall comply with the following requirements:

- a. Minimum public open space: No less than twenty-five percent (25%) of the developable area (i.e., land area exclusive of land under water or marsh areas) located within the MDP area shall be publicly accessible open space as defined hereunder.
  - i. For purposes of this Section XXIV, public open space shall be defined as usable areas devoted to outdoor active or passive recreation, pedestrian alleys, walkways, sidewalks, public parks, squares, outdoor public markets, boardwalks, outdoor cafe space open to the general public, and suitably designed and accessible space on roofs of a building with provision for at-grade public access on at least two sides and alleyway connections to the abutting streets, or other similar outdoor areas open to the general public. Notwithstanding the foregoing, the City Council may through approval of a MDP allow surface parking spaces accessory to Facilities of Public Accommodation as defined under 310 CMR 9.00 to be counted as public open space.
  - ii. Each MDP area shall include at least one contiguous public open space area that shall exceed ten thousand (10,000) square feet in area, and that shall be lined with publicly-oriented uses (i.e. Facilities of Public Accommodation as defined under 310 CMR 9.00).

In such contiguous public open space area, appropriate surface materials, bollards, and other urban design features shall be utilized to emphasize the primacy of pedestrians, with subordinate vehicular access available to parking spaces.

- iii. Any open space areas used in satisfaction of the minimum open space required hereunder may include any open space areas being used to satisfy the requirements of Massachusetts General Law Chapter 91 waterways licensing program.
  - iv. All public open space shall be identified on the approved Master Development Plan and shall be improved by the applicant to quality standards and configurations suitable for their intended uses as determined by the Planning Board through BLAR Approval. Any public space shown on MDP approved by the City Council shall be considered public open space in satisfaction of this Section XXIV-D(1)(a). Any such public open space identified on approved MDP cannot be transferred to a new use absent an amendment to the MDP approved by a super-majority vote of the City Council. Said public open space areas shall be dedicated for access by the general public pursuant to a recorded agreement approved as to form by the City's legal counsel and the applicant. Notwithstanding the grant of such public access, all open space, roadways, driveways, sidewalks and parking areas within the WWOD Project area shall be maintained in good condition at the sole cost of the applicant and/or property owner, and their successors and assigns with no such obligation to the City.
- b. Minimum street frontage: Fifteen (15) feet.
  - c. Front yard setbacks: No minimum with up to a six-foot maximum building setback to allow for traffic visibility across corners and driveways and design articulations such as protruding architectural features (i.e. bay windows, porches and stoops) provided such setbacks do not affect more than forty percent (40%) of the street wall on any block.
  - d. Minimum side and rear yard setbacks: No minimum, except for ten (10) feet from existing residential uses located outside the Master Plan Development area for that portion of a building above the first level.
  - e. Maximum building height: (i) Thirty-five (35) feet (measured to mid-point of sloped roof) for buildings set back more than 400 feet from the northerly boundary of the Merrimac Street right of way; (ii) Fifty-five (55) feet (measured to mid-point of sloped roof) for buildings with frontage along Merrimac Street, with the top floor to include a required step-back from the front façade of no fewer than eight (8) feet; and (iii) Forty-five (45) feet (measured to mid-point of sloped roof) for all other buildings, with the top floor to include a required step-back from the front façade of no fewer than five (5) feet.

For purposes of this Section XXIV, building elements and architectural features extending above the mean roof elevation (whether sloped, vertical or horizontal), which lend architectural character to the building or which accommodate necessary features not used for human occupancy (including, without limitation, belfries, cupolas, domes, monuments, spires, chimneys, masts, flagpoles, water tanks, bulkheads, elevators, air conditioning equipment, skylights, ventilators, and other roof structures and penthouses), are excluded from the calculation of building height; provided, however, that the Planning Board may require through BLAR that rooftop mechanical features, heating and air conditioning units, vents, stacks, and mechanical penthouses be screened from public view.

In addition, notwithstanding anything to the contrary in Section II-B.10 or elsewhere in this Zoning Ordinance: (i) building height for any building that fronts onto Merrimac Street may be measured from the average grade along Merrimac Street, rather than from the average grade

around the perimeter of such building; and (ii) for any building within FEMA jurisdiction, building height shall exclude any portion of such building required to account for mandatory FEMA separations.

- f. Floodplain elevation: The lowest residential floor of any building shall not be lower than two (2) feet above the mapped FEMA Flood Plain, as shown on FIRM Panel 25009C0136G effective July 16, 2014, and FIRM Panel 25009C0128F, effective July 3, 2012.
- g. Two or more buildings on one lot: Notwithstanding anything in this Zoning Ordinance to the contrary, more than one (1) building or structure, including those intended solely for use as residential dwellings, is allowed on a single lot.
- h. Calculation of dimensional requirements: All dimensional requirements shall be calculated across the entire area of the relevant MDP, irrespective of individual lot lines within such area. Consistent with typical site configurations for larger, complex mixed-use developments, individual buildings within the MDP area may be located immediately adjacent to individual lot line boundaries. Without limiting the foregoing, there shall be no minimum corner clearance, lot area, lot width, setback requirements, minimum non-wetland area, maximum building coverage, maximum impervious surface, minimum spacing between two or more buildings or structures on one lot, or lot coverage requirements for a project developed under this Section XXIV, provided that a minimum setback and corner clearances may reasonably be required by the Planning Board through BLAR to preserve acceptable sightlines for traffic and pedestrian safety.

The requirements of this Section XXIV shall not be applied to the individual lots or ownership units within an approved MDP area, but shall be applied as if the entire area were a single conforming lot, whether or not the same is in single or multiple ownership. The applicant for any MDP and/or BLAR approval shall provide documentation of calculations to ensure cumulative compliance with this Section for any given WWOD Project and/or phase. Any violation of this Zoning Ordinance by an owner or occupant of a single lot or ownership unit or demised premises within an approved MDP area shall not constitute a violation by any other owner or occupant; provided, however, that the foregoing shall not be deemed to affect the Planning Board's right to impose conditions to address adverse project impacts related to any previous WWOD Project Phase.

## 2. Sign requirements.

The following sign requirements shall apply to all projects subject to this Section XXIV:

- a. Signs allowed by right: Any combination of wall signs and window signs shall be permitted by right within the Master Development Plan area such that the aggregate square footage of all such signs associated with each individual building shall not exceed the product of the total area of the façade on which such signs are installed multiplied by ten percent (10%). The following signs shall not be subject to the square footage limitation in the preceding sentence: directional signs that are intended solely to guide vehicle and pedestrian travel and/or provide safety information relating to the use of a property and signs that are intended to identify the address of any building or unit(s). Wall and window signs may include, without limitation, wall graphics (whether painted or vinyl) that serve as architecture, and panels, vinyl and/or TV displays within windows of stores. Any sign projecting more than eighteen (18) inches from the building façade shall provide at least ten (10) feet of clearance above the pedestrian grade.
- b. Sign standards: All signs shall be manufactured using industry standard materials that are consistent with a high-quality project, expressly excluding high-gloss plastic. Structurally necessary brackets, posts or other supports may be visible if compatible with the appearance



of the sign they support. Indirect illumination of a sign by properly shielded light fixtures, or by edge-lighting, or by halo lighting shall be permitted. Internal illumination of signage shall be otherwise prohibited.

- c. Comprehensive Sign Plan: Notwithstanding anything in this Section XXIV to the contrary, in recognition of the interrelated nature of signage systems in mixed-use developments, and the importance of clear, adequate, and effective signage to the safe and efficient operation of such projects, the Planning Board shall review and must approve a comprehensive sign program for each WWOD Project Phase as part of BLAR Approval.

### 3. Other design and performance requirements.

The following other design and performance requirements shall apply to all projects subject to this Section XXIV:

- b. Vehicular and pedestrian access:
  - i. Traffic planning shall consider the surrounding system of public streets adjoining the WWOD Project area, the existing and projected future vehicular trip volumes, the number and location of proposed access points to public streets, and existing traffic controls and management measures. As part of BLAR Approval, the Planning Board must determine that the impact of volume increases on adjacent residential districts and business areas generated by a WWOD Project Phase and proposed mitigation (i.e. proposed traffic improvements) in connection with the same are consistent with the traffic impact studies and mitigation measures approved by the City Council in connection with the MDP.
  - ii. To aid the City Council in its review of the foregoing performance standards, the applicant shall pay all costs for the Office of Planning and Development to engage a properly licensed traffic engineer to peer review the applicant's traffic study and deliver a peer review report with any comments or questions for the Council's consideration. The City Council shall engage such traffic engineer no later than seven (7) calendar days after its having opened the required public hearing on the adoption of a MDP. The cost of the traffic engineer's peer review shall be paid for by the applicant for a MDP in accordance with the framework provided in MGL Chapter 44 Section 53G.
  - iii. Streets, interior drives, and infrastructure related to vehicular use shall be designed in accordance with applicable engineering "best practices," and shall be designed with sufficient capacity to accommodate anticipated trip generation and turning movements, to provide for adequate access by public safety vehicles and maintenance equipment, and to safely maintain and encourage pedestrian and bicycle circulation.
  - iv. Any MDP shall identify the following private ways on a WWOD Public Access Diagram included therewith,, said areas to be maintained and kept open for public access and circulation: (a) "Tournament Wharf Way;" (b) "McKay's Wharf Way;" and (c) "Brown's Wharf Way." Public access and use of said ways shall not be changed without an amendment to the MDP approved by the City Council.
  - v. With the exception of ways providing primary access to the WWOD Project area from Merrimac Street, the character of all public ways and private ways open to public travel within the Master Development Plan area, especially as indicated through surface materials, shall indicate that motor vehicles are secondary in importance to pedestrians and cyclists. The Planning Board may require, as a condition of BLAR approval, that the

applicant implement alternative use of surface materials, bollards, planters, and other similar features to ensure compliance with this subsection.

c. Architecture generally:

- i. Structures shall be designed to create a high-quality, visually pleasing, unifying and compatible image for the development as a whole. Any combination of architectural design elements may be employed to meet this standard, including building color, texture, materials, scale, height, setbacks, roof and cornice lines, signs, lighting, and elements such as door and window size and location, and door and window detailing, including glazing.
- ii. New architecture need not "conform" to the Federal-style buildings along lower State Street and Market Square, but must still demonstrate compatibility with its character and quality.
- iii. All building and other structures within a WWOD Project Phase shall be designed with common elements that both create a sense of unity and express a relationship to the interior. These elements may include the horizontal spacing of bays, columns, and windows, and the vertical alignment and spacing of floors. Structures shall relate harmoniously to the surrounding streetscape and to the scale and architecture of other buildings.

- d. Building materials: Exterior walls shall use a combination of architectural masonry and cementitious materials, including but not limited to brick, glass, stone, stucco, exterior insulation and finishing system (EIFS), high quality siding and shingles (including wood siding and Hardie-plank cement clapboards, but excluding vinyl siding), precast concrete architectural panels, stainless steel, painted metal, and split face block. Stainless steel shall be used solely as an accent feature, unless otherwise approved by the Planning Board as part of BLAR Approval.

e. Building facades, fronts and backs:

- i. Buildings shall have differentiated "front" and "rear" facades. The primary façades of parking structures shall be designed to a standard of architectural finish consistent with other buildings within the project.
- ii. To avoid long, unbroken expanses of wall, the architecture shall incorporate, as appropriate, design features providing horizontal and vertical relief including projections, building jogs, elements of transparency or windows, architectural detailing, and changes in surface materials. The design of public entrance ways shall incorporate architectural features and elements to emphasize the primary entrance locations and interrupt long stretches of building façade. All exterior walls shall be designed and finished with materials that maintain a consistent architectural character with adjoining buildings, but not necessarily using the same material.

- f. Fenestration: Traditional (pre-modern) fenestration patterns typical of Federal-style buildings along lower State Street and Market Square are encouraged.

g. Roofs:

- i. Flat roofs with appropriate design elements and articulations shall be permitted; provided, however, that long, continuous flat roofs are discouraged, but may be allowed where deemed appropriate by the Planning Board through BLAR Approval.

- ii. The Planning Board may require through BLAR that rooftop mechanical features, heating and air conditioning units, vents, stacks, and mechanical penthouses be screened from public view.
- h. *Compliance with Related Architectural and Site Design Standards: All applications for BLAR Approval under this Section XXIV shall demonstrate compliance with the following architectural and site design standards referenced within the City's Smart Growth District (Section XXIX), except where a waiver of compliance is granted by the Planning Board through BLAR Approval:*
  - i. XXIX-I (7)(a)(iv)
  - ii. XXIX-I(7)(b)(i through xii)
  - iii. XXIX-I(7)(c)(i through x)
  - iv. XXIX-I(7)(d)(i through iv)
  - v. XXIX-I(7)(e)(i through iii)
  - vi. XXIX-I(7)(f)(i through ii)
  - vii. XXIX-I(8)(a)(i through viii)
  - viii. XXIX-I(8)(b)(i through iii)
  - ix. XXIX-I(8)(c)(i through iv)
  - x. XXIX-I(8)(d)(i through vii)
  - xi. XXIX-I(8)(e)(i through ix)
  - xii. XXIX-I(8)(f)(i through iii)
  - xiii. XXIX-I(8)(g)(i through xvi)
  - xiv. XXIX-I(8)(h)(i through iv)
  - xv. XXIX-I(8)(i)(i through xii)
  - xvi. XXIX-I(8)(j through m)
  - xvii. XXIX-I(9)(a)(i, iii, iv through ix)
  - xviii. XXIX-I(9)(b through f)
- i. *Outdoor seating:* For outdoor seating, restaurants, and other uses, sufficient clearance shall be maintained for safe and efficient public access along sidewalks, access drives, and roadways. Such areas shall be appropriately separated from streets and sidewalks by means of low fencing, bollards, code-compliant grade change, plantings, or other similar measures. Outdoor sales and display areas shall be maintained in a neat and orderly condition at all times.
- j. *Screening of other outdoor areas:* Exposed storage areas, exposed machinery or electric installations, common service areas, truck loading areas, utility structures, trash/recycling areas and other elements of the project infrastructure shall be subject to reasonable visual mitigation requirements under BLAR approval, including, but not limited to, screen plantings

or buffer strips, combinations of visually impermeable fencing and plantings, or other screening methods necessary to assure an attractive visual environment.

- k. Preservation of historic buildings: Deeded preservation restrictions shall be provided governing the rehabilitation of any buildings located within the MDP area that are listed on the National Register of Historic Places and are contributing structures to Newburyport's National Register Historic District. Historic rehabilitation standards for these buildings shall conform to the Federal Secretary of the Interior's "Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings."
- l. Subdivision within an approved Master Development Plan area: The owner of any lot shown on an approved MDP shall be entitled to lawfully divide such lot, including without limitation by virtue of plans endorsed by the Planning Board pursuant to M.G.L. Chapter 41, Section 81P, without modifying the approved MDP and without the need for other approvals under this Zoning Ordinance, provided that any such lot must have minimum frontage of fifteen (15) feet. To the extent consistent with the Subdivision Control Law, M.G.L. Chapter 41, Section 81K, et seq., lots within a MDP area may be separated by a public or private way.
- m. MGL Chapter 91 requirements: Any MDP and WWOD Project Phase shall comply with Massachusetts General Laws Chapter 91 requirements for the provision of publicly-accessible open space, facilities of public accommodation and pathways along the waterfront edge.
- n. Public open space:
  - i. Exterior, public open space shall be included to encourage pedestrian activity and to visually separate buildings or groups of buildings. When reasonably feasible, independently sited public open spaces shall be connected to other public open spaces by use of pathways and other similar pedestrian connections.
  - ii. The public square required under subsection XXIV-D.1(a)(ii), above, shall be lined with publicly oriented uses (i.e. Facilities of Public Accommodation), and shall feature high quality design and materials to encourage public use.
- o. Utilities:
  - i. All principal buildings shall be connected to the public water supply. Sewage collection shall be by the public sewage collection system.
  - ii. Stormwater management systems serving the MDP area shall be designed in conformance with Massachusetts Department of Environmental Protection Stormwater Standards, as amended from time to time, to efficiently collect runoff from all impervious surfaces, roofs, and canopies in a manner that avoids adverse drainage impact on any neighboring property. A plan for controls that are appropriate and specific to the site and the WWOD Project, and which includes both pre-construction and post-development measures, shall be employed to mitigate erosion, pollution and sedimentation impacts. Where space, topography, soils, and the character of the proposed development make it practical, low impact design (LID) techniques that capture and recharge stormwater runoff to the groundwater shall be used as an alternative to closed (e.g. piped) systems.
  - iii. Access easements to any utilities within a WWOD Project shall be granted to the City, as required, to assure maintenance and emergency repair. Notwithstanding the foregoing, the applicant and/or property owner within any portion of a WWOD Project shall be

solely responsible for routine maintenance of all on-site utilities, including all stormwater management features.

- p. Public safety: Development shall be designed and located so as not to endanger its occupants, users, or the public. The design shall include adequate water supply distribution and storage for fire protection. Vehicular circulation shall consider the access needs of emergency and public safety vehicles. As a condition of BLAR approval the Planning Board may require written approval from the Newburyport Fire Department with respect to emergency vehicle access and the location of fire hydrants.

#### **XXIV-E – Accessory parking and loading requirements.**

The following accessory parking and loading requirements set forth in this Section XXIV-E shall apply to all development subject to this Section XXIV, in place of other parking and loading requirements under this Zoning Ordinance.

##### **1. Required accessory parking.**

Parking requirements shall be provided on a phase-by-phase basis within the MDP area and shall be as set forth on a schedule included with the MDP (the "Parking Schedule"), rather than by reference to Section VII of this Zoning Ordinance. The number of parking spaces within a WWOD Project or any portion thereof shall be approved by the Planning Board as part of BLAR Approval and the actual aggregate number of spaces approved by the Planning Board may vary from the Parking Schedule in accordance with this Section. The number of parking spaces contained within the MDP area may change from time to time, based upon changes in use and tenant requirements, and/or due to the results of post-occupancy parking studies completed by the applicant for each phase of the MDP, provided that the minimum parking requirements set forth on the approved MDP are satisfied.

Notwithstanding the foregoing, the Parking Schedule and requirements for each WWOD Project Phase shall be consistent with the following ratios, in the cumulative aggregate:

- a. Residential parking: 1.0 parking space per studio unit; 1.25 parking spaces per one-bedroom unit; 1.5 parking spaces per two-bedroom unit; and 2.0 parking spaces per three-bedroom or larger unit.
- b. Hotel parking: 1.0 parking space per guestroom.
- c. Marina parking: 0.5 parking space per slip.
- d. Retail and other uses not set forth in Sections XXIV-E(1)(a)-(c) above: Parking shall be provided in accordance with Section VII-B, subject to a payment into the Intermodal Transportation Improvement Fund (ITIF) in accordance with Section VII-A.

##### **2. Location of required accessory / ancillary parking.**

Parking required under the Parking Schedule may be provided through any combination of at-grade, on-street, and/or structured parking facilities (including mechanized/automated parking and managed parking (with or without tandem spaces)), both stand-alone and part of other buildings, either (a) within the MDP area or (b) outside such area at a private parking lot or garage located within the City of Newburyport.

- a. To the extent feasible, parking within the WWOD shall be screened, and shall be permitted at the ground floor.



- b. Parking spaces on public or private streets within the MDP area may be utilized in determining satisfaction of the requirements set forth in the Parking Schedule.
- c. Sidewalks or multipurpose pedestrian ways and facilities shall connect each parking lot or facility to buildings, public spaces, adjacent properties or other destination points within the MDP area, as determined in the Planning Board's reasonable discretion.

### **3. Shared parking.**

As part of a MDP application, the applicant may demonstrate satisfaction of the parking requirements of this Section XXIV through a combination of dedicated and shared off-street parking arrangements (including mechanized/automated parking and managed parking (with or without tandem spaces)), which may include privately-owned structured parking, located on contiguous lots or on separate lots within the MDP area or outside of such area at a private parking lot or garage located within the City of Newburyport.

### **4. Parking design.**

- a. Surface parking lots shall not exceed 20,000 square feet in contiguous area and shall be avoided, and parking within building ground floors shall be encouraged to the maximum extent feasible, provided such parking areas are recessed and properly screened from public view.
- b. Parking lot landscaping, both internal and perimeter, for a WWOD Project or any portion thereof shall be substantially as shown on the approved MDP or as otherwise deemed consistent by the Planning Board as part of BLAR Approval.

### **5. Required accessory loading.**

- a. Adequate accessory loading plans shall be provided for all businesses and uses containing more than ten thousand (10,000) square feet of total floor area.
- b. When exclusive loading areas are provided, such areas shall be designed so as to have unobstructed access and shall be configured so that no trucks or other vehicles are parked on a public street while loading or unloading, or while waiting to load or unload.
- c. Loading within the WWOD shall be screened, and shall be permitted at the ground floor but not along any façade fronting the Merrimack River or Merrimac Street

## **XXIV-F - Master Development Plan requirements.**

A project may be developed under this Section XXIV solely pursuant to a MDP and the supporting materials described in this Section XXIV-F adopted by a two-thirds vote of the City Council in accordance with the procedures for adoption or change of zoning ordinances or by-laws set forth in M.G.L. Chapter 40A, Section 5. As used in this Section XXIV, "Master Development Plan" refers to any Master Development Plan (MDP) approved by a two-thirds vote of the City Council and on file with the City Clerk. An applicant may submit such a Master Development Plan (MDP) and supporting materials for a WWOD Project simultaneous with or subsequent to the adoption of this amended Section XXIV.

### **1. Minimum land area**

The minimum land area eligible for a MDP in a single or consolidated ownership or control at the time of application is four (4) contiguous acres. For the purposes of this section, parcels of land divided solely by public and private streets and public and private open space shall be deemed to be contiguous.

## 2. Submission requirements for Master Development Plan.

Each application for a MDP submitted for approval by the City Council shall include all of the following materials:

- a. An application fee in the amount of five thousand dollars (\$5,000).
- b. A completed application form as prescribed by the Office of Planning & Department;
- c. A written statement by the owner(s) of the property authorizing submittal of the application;
- d. An accurate legal description of the property, including a survey plan providing the total land area and clearly indicating the parcels of land to be included within the proposed WWOD Project;
- e. A scaled map or diagram of the property in its existing condition, showing topographical features, including wetlands and water bodies, if any, and utilities;
- f. A statement describing the existing improvements on and use of the subject property and any proposed changes, including proposed total square footages by use;
- g. The location and dimensions of existing and proposed ways whether public or private, for all transportation modes, including pedestrian, bicycle, and vehicular;
- h. Plans and elevations indicating the location of permissible building areas; maximum building height; anticipated parking spaces to be provided for the development (subject to adjustment based upon shared parking, use changes and tenancy requirements); aggregate maximum developable Gross Floor Area and unit count; and conceptual architectural drawings of proposed buildings;
- i. A proposed, conceptual comprehensive sign plan indicating areas where signage is proposed or anticipated;
- j. A proposed utilities plan;
- k. A proposed plan of construction of the project in phases (Phasing Plan);
- l. A traffic impacts study;
- m. A parking study, including analysis of any proposed shared parking;
- n. An analysis of water / wastewater impacts;
- o. An analysis of stormwater runoff;
- p. Photosimulations based on a three-dimensional (3D) computer model of building massing from key publicly accessible vantage points, including but not limited to: views along "Tournament Wharf Way" and "McKay's Wharf Way"; certain public open space(s); the nearby Clipper City Rail Trail; and east and west views along the proposed WWOD harborwalk extension (parallel to the Merrimack River);
- q. A flood-mitigation study and action plan (e.g. potential shelter in place by residents and relocation of parked cars during heavy flooding and/or storm surge events);

- r. Proposed sustainability measures to be incorporated into the project including Low Impact Development (LID) measures, energy efficiency measures, use of solar arrays, green roofs, low-flow plumbing fixtures, and similar techniques; and
- s. Such other documents or information that may be required by the City Council, including, without limitation: (i) title reports; (ii) building and development data; (iii) sign information; (iv) photographs of existing conditions; (v) materials sample boards; (v) scale models; (vi) photomontages; (vii) and/or environmental information.

### 3. Minor Modifications of an approved Master Development Plan.

Once a MDP has been approved by the City Council, the Planning Board may, in its discretion, approve a minor modification of such MDP by a majority vote at a public meeting.

- a. Definition of "minor modification:" For purposes of this subsection XXIV-F(3), plan modifications are "minor" solely if the changes proposed thereunder, considered in the aggregate with all minor modifications previously approved, satisfy all of the following criteria, as determined by the Zoning Administrator:
  - i. Are substantially consistent with the requirements and standards set forth in this Section XXIV and are not likely to have a material adverse effect on the overall design and implementation of the WWOD Project;
  - ii. Do not increase by more than ten percent (10%) the maximum gross floor area limitations for each category of use as noted in the approved MDP or the size of any individual permissible building area;
  - iii. Do not increase the land area included within the MDP by more than fifteen percent (15%);
  - iv. Are not likely to adversely affect the storm water quality of the development; and
  - v. Are not likely to increase projected vehicle trips by more than ten percent (10%), unless it is demonstrated, in a traffic report submitted by the applicant, that such increase (i) for any intersection in the vicinity of the development that operates at LOS D or better would not result in a reduction of overall intersection level of service below LOS D and (ii) would not otherwise cause vehicular traffic to operate in an objectively unsafe manner, or cause queue lengths that block intersections, unless any such impacts are addressed with traffic mitigation, proposed by the applicant's Registered Traffic Engineer and subject to approval by the Planning Board.
- b. All other modifications: In the event that the Zoning Administrator determines that a proposed change to an approved MDP does not meet the requirements for approval as a minor modification pursuant to this Section XXIV-F.3, or in the event that the Planning Board has exercised its discretion not to approve a proposed minor modification pursuant to such subsection, then the applicant shall have the option of seeking an amendment of the MDP by super-majority vote of the City Council.
  - i. The procedure for approval of any amendment to the MDP shall be the same as for a new MDP.
  - ii. Subsequent to the approval of a MDP, the City Council may allow the addition of land to the area of such MDP, by way of an amendment to the MDP, however, any such amendment shall require the consent of the original applicant(s) or its/their successor(s) in interest.

- iii. An amendment to the MDP to add land to the MDP area that is not in consolidated ownership or control of the original applicant(s) or its/their successor(s), may not utilize any of the open space, utilities, streets, parking or any other requirements of the MDP to meet the requirements of this Zoning Ordinance unless authorized by the City Council and also the original applicant(s) or its/their successor(s).
- iv. Any resulting, amended MDP must meet all of the applicable open space, utilities, parking and other requirements of this Section.

**4. Changes in ownership after approval.**

Subsequent to the approval of a MDP, applications for amendments or additions to the MDP shall not require that the land be in a single or consolidated ownership or control. Any approvals granted for a WWOD Project or any portion or phase thereof under this Section XXIV may be freely transferred between owners, provided that the transferee complies with the provisions of this Section XXIV.

**XXIV-G – Development agreement requirements.**

Prior to the submission, review or approval of any BLAR application for land within the area of an approved MDP, the owner(s) of all such land and the City of Newburyport, acting by and through its City Council, shall enter into a development agreement. Such development agreement shall contain provisions to ensure predictable phasing, mitigation measures, and public benefits consistent with the approved MDP. Upon final execution, notice of such agreement shall be recorded by the owner(s) at the Registry of Deeds.

**XXIV-H -- BLAR requirements.**

Following approval of a MDP and final execution of the corresponding Development Agreement, and prior to the issuance of any building permit for any new building, parking lot, fence over six feet in height, or for any extension, alteration, or addition of or to an existing building, parking lot, or fence over six feet in height, or the commencement of any construction pursuant to a MDP within the MDP area, such proposed work shall undergo Building Layout and Architectural Review (BLAR) conducted by the Planning Board. An applicant may seek any number of BLAR Approvals to carry out a WWOD Project or any portion thereof, including each corresponding to a WWOD Project Phase; provided, however, that such phasing is consistent with the Phasing Plan approved by the City Council in connection with the MDP.

The Planning Board shall issue a BLAR approval (a "BLAR Approval") if it finds that the final plans and materials provided by the applicant (i) materially conform to the approved MDP approved by the City Council, and (ii) are otherwise compliant with the standards and requirements set forth in this Section XXIV. The Planning Board's BLAR Approval shall be conclusive evidence of such findings.

**1. Submission requirements for BLAR.**

Each application for BLAR Approval submitted for approval by the Planning Board shall include the following documents to determine the application's consistency with the approved MDP and supporting materials:

- a. An application fee in the amount of five thousand dollars (\$5,000).
- b. A completed application form as prescribed by the Office of Planning & Department;
- c. A written statement by the owner(s) of the property authorizing submittal of the application;

- d. An accurate legal description of the property, including a survey plan providing the total land area and clearly indicating the parcels of land to be included within the applicable WWOD Project and proposed BLAR Approval;
- e. A scaled map or diagram of the property in its existing condition, showing topographical features, including wetlands and water bodies, if any, and utilities;
- f. A statement describing the existing improvements on and use of the subject property and any proposed changes, including proposed total square footages by use;
- g. The location and dimensions of existing and proposed ways whether public or private, for all transportation modes, including pedestrian, bicycle, and vehicular;
- h. Dimensioned architectural drawings, including plans and elevations for all building facades, of the existing and proposed buildings, landscaping, open space; and parking and loading facilities, indicating maximum building height, total floor area, total interior parking spaces, total number of dwelling units and/or hotel guest rooms, and the like;
- i. A proposed comprehensive sign plan;
- j. A proposed utilities plan;
- k. A proposed plan of construction of the project in phases (Phasing Plan);
- l. Technical reports and studies that demonstrate that the WWOD Project Phase is consistent with the reports and studies that were approved by the City Council in connection with the MDP (e.g., a soils report, a traffic impacts study, a parking study, a water / wastewater impact analysis, an analysis of stormwater runoff, a flood-mitigation study and action plan and proposed sustainability measures).

## **2. Complete BLAR applications.**

An application for BLAR Approval shall be determined to be complete when all the required materials have been submitted, and the Zoning Administrator has determined that they are adequate to allow the Planning Board to determine if the required findings under Section XXIV-H can be made.

## **3. Cancellation of BLAR application.**

The Zoning Administrator may cancel a pending application for BLAR Approval, by giving writing notice to the applicant, if information has been requested from the applicant in writing by the Zoning Administrator or the Planning Board, and such information has not been submitted within sixty (60) days. Applications that have been cancelled by the Zoning Administrator shall be considered actions without prejudice, such that immediate re-application for the same WWOD Project Phase is permitted. The re-application shall be subject to all then-current fees and regulations. The applicant may appeal to the Planning Board the Zoning Administrator's decision to cancel its pending application within ten (10) days of the applicant's having received the cancellation decision.

## **4. BLAR application meeting.**

The Planning Board shall conduct a public meeting regarding a BLAR Approval upon receipt of notice from the Zoning Administrator that, pursuant to Section XXIV-H(2), the application materials submitted are adequate to allow the Planning Board to determine if the required findings under Section XXIV-H can be made. The Planning Board may, with the applicant's consent, continue the applicable public meeting associated with BLAR Approval as necessary in order to allow the applicant additional time to provide further



information and/or documentation of compliance with the approved MDP or other requirements of this Section XXIV.

**5. Peer Review of BLAR Application Materials.**

The Planning Board may, at its discretion, require the applicant for BLAR Approval to pay for the cost of consultants necessary to undertake a peer review of any of the technical reports or studies required under Section XXIV-H(1)(I) to determine whether the final plans and materials provided by the applicant satisfy the standard set forth in Section XXIV-H(6) below. Said costs and any such peer reviews shall be undertaken in accordance with MGL Chapter 44 Section 53G.

**6. Grant of BLAR Approval.**

The Planning Board shall grant BLAR Approval upon a finding that the final materials submitted by the applicant (i) materially conform to the approved MDP approved by the City Council, and (ii) are otherwise compliant with the standards and requirements set forth in this Section XXIV. The Planning Board's BLAR Approval shall be conclusive evidence of such findings.

**7. Conditions of BLAR Approval.**

In granting BLAR Approval, the Planning Board may impose reasonable conditions to insure that each WWOD Project Phase is consistent with the MDP approved by the City Council, including the following:

- a. Monitoring of certain development impacts, self-reporting commitments, and other measures to ensure compliance with the approved MDP.
- b. Construction of all buildings, structures, landscaping, and other establishments in accordance with the approved MDP.

**8. Denial of BLAR Approval.**

In the event that the Planning Board denies BLAR Approval, the applicant shall either: (a) withdraw its application; (b) modify its application to make it consistent with the Planning Board's findings, and submit the modified application to the Planning Board for reconsideration of the BLAR Approval; or (c) seek approval of a revised MDP by a super-majority vote of the City Council.

**XXIV-I – Permitting after BLAR Approval.**

**1. Minor modifications to BLAR Approval.**

- a. Following BLAR Approval, minor modifications to such approval may be authorized by the Zoning Administrator administratively, but only if he or she finds that each of the following criteria are satisfied:
  - i. No building square footage, dwelling units, hotel/inn guest rooms, or marina slips will be added;
  - ii. No parking spaces or loading facilities will be eliminated;
  - iii. The minor modification, as a whole, will complement the architectural style of the WWOD Project Phase; and
  - iv. All other requirements of this Section XXIV are met.

- b. The Zoning Administrator may condition his or her decision as to a minor modification to a BLAR Approval by requiring the applicant to submit such materials as may be necessary to make the above findings.
- c. Modifications not meeting the above conditions, as determined by the Zoning Administrator, shall require submittal of an application to the Planning Board to amend the BLAR Approval, using the same procedure as if a new BLAR Approval were sought.

**2. Finding of conformity prior to Building Permit.**

The Building Commissioner shall be authorized to issue a building permit for a WWOD Project or any portion or phase thereof upon receipt of evidence documenting grant of the related BLAR Approval. Building permits may be sought and issued for individual components of an approved WWOD Project (including any WWOD Project Phase in accordance with an approved MDP and BLAR Approval. Nothing in this Section XXIV shall obligate the applicant to construct all or any portion of the improvements shown on an approved MDP, provided, however, to the extent that the applicant commences construction of any portion of an approved WWOD Project in accordance with an approved BLAR Approval, the applicant shall be obligated to complete construction of all proposed improvements included within such BLAR Approval.

**3. Issuance of certificates of occupancy.**

The Zoning Administrator may approve, and the Building Commissioner shall subsequently issue certificates of occupancy for any individual component of a WWOD Project or a WWOD Project Phase, without reference to the status of any other component or phase thereof; provided, however, that construction associated with public ways, infrastructure, utilities, and public open space for any applicable WWOD Project Phase shall be substantially complete prior to the issuance of said certificate of occupancy. No certificate of occupancy shall be approved or granted unless all work within the WWOD Project or WWOD Project Phase is substantially completed in accordance with an approved MDP and BLAR Approval. The issuance of a certificate of occupancy for an approved WWOD Project, or any portion or phase thereof, shall be conclusive evidence of said WWOD Project's conformance with this Section XXIV, and no further reviews or approvals shall thereafter be required under this Zoning Ordinance.

**XXIV-J -- Enforcement:**

The Zoning Administrator shall have jurisdiction to enforce compliance with the standards and requirements of any MDP or BLAR Approval, before, during, and after construction, and may institute legal proceedings or take such other actions as are necessary to ensure compliance.

**XXIV-K - Severability.**

The provisions of this section are severable and, in the event that any provision of this section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

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Councillor Barry N. Connell