

MEMORANUDM

To: All Planning Board
From: Marnie Crouch
Date March 27, 2025
Re: Bylaw Amendments Appearing on the Warrant

There are eight Zoning bylaw amendments on the Warrant as follows:

2025/4 4-1	Zoning Bylaw Amendment – Groundwater Protection Overlay District	11
2025/4 4-2	Zoning Bylaw Amendment – Temporary Signage	12
2025/4 4-3	Zoning Bylaw Amendment – Definitions	12-13
2025/4 4-4	Zoning Bylaw Amendment – Use Regulations/Large ADUs (Appendix G-1)	13
2025/4 4-5	Zoning Bylaw Amendment – ADUs By Right (Appendix G-2)	14
2025/4 4-6	Zoning Bylaw Amendment – Inclusionary Housing (Appendix H)	14-15
2025/4 4-7	Zoning Bylaw Amendment – Site Plan Review (Appendix I)	15
2025/4 4-1	Zoning Bylaw Amendment – Flood Plain Overlay District (Appendix J)	15

Although the Article numbers and Appendix references may change, the amendments are consistent with those unanimously approved by the Planning Board. Note that the amendments to Section 3.0 have been bifurcated as only a majority vote is required for the new ADU bylaw (Section 3.6) while a 2/3 vote is required for all other amendments to Section 3.0. The only bylaw amendment that generated controversy is the proposed amendment to the GPOD. At the Select Board meeting held on March 24, 2025, several members indicated that they had received numerous negative comments about the proposed change, although only two former Planning Board members, Rick Mitchell and Marc Johnson, appeared at the public hearing. Moreover, at the Select Board meeting held on March 24, 2025, Marc Johnson stated that he intended to propose an amendment to Section 9.1

I. Amended Bylaw Language:

9.1.4 Dimensional Requirements. Regardless of the minimum Lot size of the underlying zone, there shall be a minimum lot area of eighty thousand (80,000) square feet for a building Lot **per dwelling unit** in the GPOD. See Section 4.0 for Computation of Lot Area.

II. GPOD Controversies:

At the Select Board meeting, Marc Johnson, after characterizing the Planning Board’s proposed amendment as “anti-development,” proposed the following amendment to the GPOD:

Any proposed development that falls within the GPOD which has more than four dwelling units per 80,000 square feet of land area shall be required by the applicable permitting authority to use an engineered septic system so that the Town's groundwater is properly protected.

In addition to Marc Johnson's proposed amendment, Select Board member Bill Olson asked the following:

Whether a homeowner owning land in the GPOD on a lot with a land area less than 80,000 square feet could demolish an existing home and construct another without running afoul of the amendment proposed by the Planning Board?

III. Existing Bylaw Language:

The following provisions should be considered in the Planning Board's responses to the questions that will likely be raised at Town Meeting and Marc Johnson's proposed amendment.

9.1.7 Permitted Uses. Unless prohibited or restricted by the regulations of the GPOD or other state or local regulations, uses or activities permitted in the underlying district are controlled by the requirements of the underlying district.

9.1.9 Uses and Activities Requiring a Special Permit. The following uses and activities are permitted only upon the issuance of Special Permit by the Zoning Board of Appeals under such conditions as it may require:

1. Enlargement or alteration of existing uses that do not conform to the GPOD;
2. Activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, permitted in the underlying district, except as prohibited herein. Such activities shall require a Special Permit to prevent contamination of groundwater;
3. Any use that will render impervious more than fifteen (15) percent or twenty five hundred (2,500) square feet of any Lot, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For nonresidential uses, recharge shall be by storm water infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

9.1.10 Special Permit Application. The applicant shall file eight (8) copies of a site plan and attachments. The site plan shall meet the requirements for site plan review and approval established by Section 10.6.

9.1.12 Special Permit Criteria. The Zoning Board of Appeals may grant the required Special Permit only upon finding that the proposed use meets the following standards, those specified in Section 10.5 of this Bylaw, and any regulations or guidelines adopted by the Zoning Board of Appeals. The proposed use must:

1. In no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the GPOD; and
2. Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.

IV. Issues:

1. Whether the requirement that there be 80,000 square feet per dwelling unit compromises the ability of property owners to tear down and reconstruct new dwellings on lots that are less than 80,000 square feet?
2. Whether Marc Johnson's proposed amendment can be endorsed, endorsed with qualifications, or rejected by the Planning Board?

With respect to the first issue raised by Bill Olson, I asked Mark Connors to obtain an opinion from Town Counsel as to whether the language of Section 9.1.9, adequately addresses the issue, although the language is as clear as it could be (i.e., "Enlargement or alteration of existing uses that do not conform to the GPOD" and "Any use that will render impervious more than fifteen (15) percent or twenty five hundred (2,500) square feet of any Lot, whichever is greater.").

With respect to Marc Johnson's proposed amendment, his amendment leaves several questions unanswered:

- Why four dwelling units and not two or three dwelling units?
- Where would his proposed language be inserted in the bylaw?
- Would development involving more than four dwelling units in the GPOD require a special permit?
- Would development of less than four dwelling units be as of right and/or subject to site plan review?

If zoning were to be adopted pursuant to G.L.ch. 40, §3A, the Emergency Regulations provide that development is as of right but subject to site plan review. It is unclear whether multi-family housing pursuant to §3A could occur in the GPOD under its definition of excluded land which is as follows:

"Excluded land" means land areas on which it is not possible or practical to construct Multi-family housing. For purposes of 760 CMR 72.00, Excluded land is defined by

reference to the ownership, use codes, use restrictions, and hydrological characteristics in MassGIS and consists of the following:

- (1) All Publicly-owned land, except for Lots or portions of Lots determined to be Developable public land.
- (2) All rivers, streams, lakes, ponds and other surface waterbodies.
- (3) All wetland resource areas, together with a buffer zone around wetlands and waterbodies equivalent to the minimum setback required by title 5 of the state environmental code.
- (4) Protected open space and recreational land that is legally protected in perpetuity (for example, land owned by a local land trust or subject to a conservation restriction), or that is likely to remain undeveloped due to functional or traditional use (for example, cemeteries).
- (5) All Public rights-of-way and Private rights-of-way.
- (6) Privately-owned land on which development is prohibited to protect private or public water supplies, including, but not limited to, Zone I wellhead protection areas and Zone A surface water supply protection areas.
- (7) Privately-owned land used for educational or institutional uses such as a hospital, prison, electric, water, wastewater or other utility, museum, or private school, college or university.

Notably, the GPOD Map, includes the original 1985 GPOD setting forth wetlands, surface water, public water supply wells and the Title 5 zone, as well as together with Zone II Area, Zone III Area, and Interim Wellhead Protection Area.

V. Conclusions:

The Planning Board must choose among the following actions:

1. Proceed with the proposed amendment and address criticisms and the proposed third-party amendment at Town Meeting.
2. Proceed with the Planning Board's proposed amendment and accept Marc Johnson's proposed amendment with or without modifications.
3. Withdraw the Planning Board's proposed amendment and revise the GPOD bylaw as soon as practicable. This will necessitate consultation with Town Counsel as to how to accomplish this as the Warrant was closed on March 24, 2025. I asked Mark to ascertain how this would occur if Town Counsel opines that Section 9.1.9 does not adequately address Bill Olsen's question.