

Medical Use Zoning Article Tips Sheet Frequently Asked Questions (FAQ)

Why Zone?

Zoning is a tool that specifies how properties can be developed and used. Towns regulate land use by designating areas known as zoning districts, which are then described in the [Zoning Bylaw](#) and displayed on the [Zoning Map](#). The Zoning Bylaw is the text and legal framework that regulates development in municipalities.

Zoning districts regulate the types of structures that can be built as well as the kinds of uses that can operate in a given area. Some zoning districts allow residential uses, while others allow commercial or industrial uses. All parcels of land are covered by a “base or underlying” zoning district. Many parcels also have an “overlay” zoning district. For example, a commercial district might have a mixed-use overlay district to allow upper story residential uses over commercial uses under certain conditions. The Zoning Bylaw specifies which uses are allowed in a particular district. The Zoning Bylaw also explains the processes by which these uses are allowed -- either by-right or by special permit.

Why zone for specific medical uses?

A Zoning Bylaw is a complex zoning document which must be re-evaluated and amended over time. In 2017, while reviewing the University Avenue Mixed Use Overlay District (UAMUD) in detail, the Planning Board discovered a lack of clarity in the Zoning Bylaw with respect to medical uses. Definitions for two types of medical uses allowed in the UAMUD had been added to Section 2.0 of the Zoning Bylaw when the UAMUD was adopted in 2013, but these uses were not addressed in the Table of Uses in Section 4.1 of that bylaw.

Specifically, the terms “Medical Center or Clinic” and “Office of a Health Care Professional” were described as allowed uses in the UAMUD section of the bylaw and both terms were defined in Section 2 [Definitions]. However, these terms do not appear anywhere else in the Zoning Bylaw and are not specified in Section 4.1 [Table of Principal Uses] as permitted uses in any of the underlying or base zones. Thus, these defined uses are only permitted in the UAMUD.

For the rest of the Town, outside of the UAMUD, the only medical use permitted in Section 4.1 [Table of Principal Uses] is “Office of a doctor or dentist not a resident on premises”. This term is not defined in the Section 2 [Definitions], but Section 4.1 [Table of Principal Uses] shows this use is allowed by-right in all commercial zoning districts and by special permit in the General Residence (GR) zoning district.

In 2017, the Planning Board expressed concern that the lack of a definition for the term “Office of a doctor or dentist not a resident on the premises” allows it to be open to interpretation. Board members and staff were especially concerned because the defined terms for the medical used permitted in the UAMUD clearly excluded “Hospitals” and “Substance Rehabilitation or Treatment Facilities. This led to the question of whether someone might assert that these higher-intensity uses should be allowed under the undefined term “Office of a doctor or dentist not a resident on the premises. The Planning Board wished to make it clear that such was not the case, and that these two higher-intensity uses were currently “Uses Not Mentioned” in the Zoning Bylaw.

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When a “use Not Mentioned” is proposed the Building Commissioner as the Zoning Official refers to the Zoning Bylaw and interprets where a use can and cannot go. If a use is not clearly defined the Building Commissioner will review the existing definitions to see if the proposed use fits into one of the existing use categories for similar uses. (For example, the Building Commissioner could be asked to find a proposed “Hospital” use similar to the “Nursing Home” use that is currently permitted in the Administrative-Research-Office (ARO) District by special permit.) The Building Commissioner must then consider whether there is another use that is, indeed, similar to the proposed “Use Not Mentioned”. The Building Commissioner may allow the use as similar to allowed uses, or may deny the use. In either case, an applicant may appeal any interpretation of the Building Commissioner to the Zoning Board of Appeals (ZBA) and then to the courts. The lack of clarity in Westwood’s Zoning Bylaw leaves the Town exposed to the possibility of a court overturning any decision to deny a medical use which is a “Use Not Mentioned”

Each municipality will zone differently depending on their own needs and risks. Some will choose to address all potential uses, while others will leave “Uses Not Mentioned” to be worked out through the appeal process. Westwood’s Planning Board believes that the advantages of zoning for all medical uses, including “Hospitals” and “Substance Rehabilitation or Treatment Facilities”, outweighs the risk of not zoning for these uses. In addition, the Planning Board recognizes that Westwood’s convenient location with premier highway and rail access makes the Town particularly attractive to medical uses. The Planning Board would prefer to address all medical uses in the Zoning Bylaw in a comprehensive fashion as a means of maintaining control over where those uses may and may not go.

Why has this article come up so many times?

In 2017, the Planning Board reviewed all medical use terms and proposed a zoning amendment warrant article to add “Hospitals” and “Substance Rehabilitation or Treatment Facilities” to Section 2 [Definitions] and Section 4.1 [Table of Principal Uses]. The Planning Board’s 2017 warrant article proposed that both “Hospitals” and “Substance Rehabilitation or Treatment Facilities” be allowed by Zoning Board of Appeals special permit in the Administrative-Research-Office (ARO) District. More than 2/3 of Town Meeting voters voted in favor of the Planning Board’s warrant article, but the zoning amendment was eventually overturned by the Attorney general’s Office on a procedural technicality; the Planning Board had failed to vote by quorum of its members to continue one session of its open public hearing to another session.

After receiving the Attorney General’s Office’s decision, the Planning Board took steps to resubmit the warrant article for the 2019 Annual Town Meeting. During the public hearing sessions for the Planning Board’s 2019 warrant article, some residents of the East Street ARO District expressed opposition to the allowance of “Substance Rehabilitation or Treatment Facilities” in that overlay district. The Planning Board listened to these residents’ concerns and voted to withdraw the article from consideration at the 2019 Annual Town Meeting.

The Planning Board then considered a new medical use zoning amendment warrant article for consideration at the 2020 Annual town Meeting. However, the Planning Board members were unable to reach consensus on the content of the newly crafted warrant article.

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At that point, the Select Board, recognizing the untenable position of having a lack of clarity in the Zoning Bylaw, presented its own streamlined medical use zoning amendment warrant article to replace the undefined term “Office of a doctor or dentist not a resident on the premises” with the defined term “Office of a Healthcare Professional” and to add this use term and the use term for “Medical Center or Clinic” to Section 4.1 [Table of Principal Uses]. Unfortunately, due to the ongoing Pandemic, non-financial warrant articles were not considered at the 2020 Annual Town Meeting.

The Planning Board has now, once again, turned its attention to medical uses when preparing warrant articles for the 2021 Annual Town Meeting. This year an ad-hoc committee of residents was formed to assist Planning staff in considering all possible

This zoning amendment warrant article has been discussed so many times because it is important. Not regulating potential medical uses leaves the Town vulnerable to being in a reactionary position. The purpose of this article is to clearly differentiate between doctors’ and dentists’ offices and higher-intensity medical uses such as the “Medical Centers or Clinics”, “Hospitals”, and “Substance Rehabilitation or Treatment Facilities”, so that the higher-intensity uses can clearly be **prohibited** in residential and local business districts (Washington & High Streets).

Why not leave the zoning the way it is?

One of the defined uses could be proposed in a location not compatible with the surrounding properties. Additionally, many of these types of medical uses are operated by non-profit entities. Westwood has limited commercial land and commercial land is valuable because of Westwood’s split tax rate, under which commercial properties pay a much higher tax rate than residential properties, thus reducing the annual tax payments due from residential property owners. This commercial tax base provides significant funds for town services, including the support for Westwood’s excellent public school system. The Planning Board and Select Board recognize the value of the Town’s commercially-zoned land and do not wish to see Westwood’s commercial tax base diminish through the establishment of new non-profit uses in commercial districts where those uses are not required to pay property taxes. The potential loss of commercial property value and commercial tax payments could be expected to have a significant negative impact on the Town.

What is the current process if a Medical Center or Clinic were proposed in Westwood?

“Medical Centers or Clinics” are currently allowed in the University Avenue UAMUD District per Section 9.7 of the Zoning Bylaw. Specific developments are regulated by the University Station Master Development Plan and the existing development agreement between the Town and the developer, which requires a payment in-lieu of taxes (PILOT) agreement for non-profit users in that district.

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Outside of the UAMUD, the potential location of a “Medical Center or Clinic” is less clear. A proponent could assert that a new “Medical Center or Clinic” is permissible by right in any district where an “Office of a doctor or dentist not a resident on the premises” is currently permitted – that is to say, in any commercial district or in the General Residence (GR) District by ZBA special permit. If such assertion was rejected by the Building Commissioner, it could be appealed to the ZBA, and then to the courts. The Town would be vulnerable to the potential allowance of such a use by the courts, due to the lack of clarity in Westwood’s Zoning Bylaw. If such occurred, and if the proposed operator is a non-profit entity, the Town would face the loss of commercial property value and associated tax payments.

What is the current process if a Substance Rehabilitation or Treatment Facility were proposed in Westwood?

Westwood’s Zoning Bylaw does not currently define nor regulate “Substance Rehabilitation or Treatment Facilities”. Any request to build such a facility would thus be reviewed by the Building Commissioner as a “Use Not Mentioned”. The Building Commissioner would look to see where any similar use is permitted. If the Building Commissioner determined that a larger-scale “Substance Rehabilitation or Treatment Facility” was similar to a “Nursing Home”, which is allowed by ZBA special permit in the ARO District, then that proposed “Substance Rehabilitation or Treatment Facility” could be considered by the ZBA for a special permit to locate on any parcel in either the Lowder Brook Drive or East Street ARO District. Similarly, if the Building Commissioner was asked to consider a smaller-scale “Substance Rehabilitation or Treatment Facility”, and he determined that the smaller-scale facility was similar to an “Office of a doctor or dentist not a resident on the premises”, which is allowed by-right in any commercial district and in the General Residence (GR) District, then that proposed “Substance Rehabilitation or Treatment Facility” would be permitted by right on any properties within any of those districts. The proposed medical use article is intended to ensure that any “Substance Rehabilitation or Treatment Facility” which is proposed after the adoption of this article can only be located on one of the two specified parcels in the Lowder Brook Drive ARO District only, and only with the approval by the ZBA of a Medical Facilities Overlay District (MFOD) special permit. This will allow for the ZBA’s consideration of any potential negative effects associated with the proposed facility, including any negative effects on the adjacent neighborhood and negative fiscal implications for the Town as a whole. If the ZBA does not find that the specific proposal adequately mitigates potential negative effects, the ZBA will have the discretion to deny the proposed use. This will endow the Town with a greater level of local control.

Can the Zoning and Planning Board just say no to unwanted development?

The Zoning Board of Appeals and the Planning Board are limited by the requirements of the Massachusetts Zoning Act and by the terms of Westwood’s own Zoning Bylaw. The Town cannot simply deny a property owner’s right to develop land unless the development proposal is clearly

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inconsistent with the regulatory requirements as specified in the Zoning Bylaw. Any decision either board makes can be subject to an appeal to the courts. All Planning Board and ZBA votes must be supported by written findings of fact with criteria for approval or denial. If an application is denied, an applicant has the right to appeal. Upon appeal, the court will look to the text of Westwood’s Zoning Bylaw and to the manner in which the Zoning Bylaw provisions were applied. If the court finds that the Town acted without justification to deny a proposed use, the court may remand the case to the applicable board for reconsideration, or may, in some case, substitute its judgement for that of the board and allow the development to move forward.

What are the existing gaps in Westwood’s Zoning and how will this proposal fix it?

	Definition of “Office of Health Care Professional” and “Medical Centers or Clinics”	Definition for “Hospital” and “Substance Rehab. & Treatment Facility”	Definition of “Office of a Doctor or Dentist not a resident on premises”	Expansion of Table of Use Chart for all 4 Medical Terms	Criteria for how medical uses are allowed under certain conditions
Existing Zoning Bylaw	✓	✗	✗	✗	✗
Proposed Zoning	✓	✓	✗	✓	✓

With the proposed new zoning where are Medical Centers or Clinics allowed and what is the process?

As proposed in the draft article submitted for Annual Town Meeting in 2021, “Medical Centers or Clinics” would only be allowed in the UAMUD (the University Avenue Mixed Use Overlay District), which is the University Station development along University Avenue and Station Drive. “Medical Centers or Clinics” would be subject to the Development Agreement currently in place for that development, and any “Medical Center or Clinic” operated by a non-profit organization would be obligated to execute a payment in-lieu of taxes (PILOT) agreement with the Town. In addition, as with all development at University Station, the proposal would require a Project Development Review by the Planning Board.

With the proposed new zoning where are Substance Rehabilitation and Treatment Facilities allowed and what is the process?

As proposed in the revised 2021 draft article, “Substance Rehabilitation or Treatment Facilities” are only allowed by special permit from the ZBA in a newly created Substance Rehabilitation Facilities Overlay District (SRFOD), which encompasses eight existing parcels on Southwest

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Park. These parcels are within the HB (Highway Business) zoning district and are currently occupied by the several office and warehouse type use. No proposals or inquiries of interest have been received for any “Substance rehabilitation or Treatment Facility” for any property in Westwood, nor have any inquiries been made about the potential redevelopment of either of these two properties. The location was selected due to the location with close proximity to the highway, separation from nearby residences, and no residences currently live in this district, and sufficient size of parcels to conclude that the proposed overlay district is reasonable.

What are other Towns doing?

Every town zones differently depending on needs, desires, resources, and zoning amendment process. Here are a few examples from neighboring towns:

Norwood

Norwood is currently proposing a new Medical Services Overlay District amendment to its Zoning Bylaw that also includes hospitals, medical centers, and social service facilities for drug and alcohol treatment.

Dedham

In Dedham, substance rehabilitation treatment centers are permitted by special permit from the ZBA in four zoning districts. Dedham also has a section in its Zoning Bylaw which permits Hospitals and Related Facilities by special permit under certain conditions.

Canton

Canton’s Zoning Bylaw allows In-patient Medical Facilities: Hospitals, Long-term care Facilities, or Substance Abuse Detoxification or Treatment Centers by special permit request from the ZBA.

Newton

In Newton, Hospitals are allowed by special permit in several commercial zones and the city’s Zoning Bylaw allows for Residential Care Facilities by special permit in manufacturing zones.

Medfield

In Medfield, Hospitals and Medical Offices are allowed by special permit in four zoning districts (three commercial zones and one residential), and Community Residences for rehabilitation of mentally and physically handicap allowed by special permit in four residential zones. The area of Medfield Hospital site has been established as a Medfield State Hospital District with a strategic reuse master plan.

Needham

Needham’s Zoning Bylaw has a Medical Overlay District that allows: Community Hospital, Medical

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Clinic, Medical Services Building, and Health Care Facility by special permit which includes residential and rehabilitation services.

What Massachusetts Towns have substance treatment facilities?

In-patient and out-patient facilities substance rehabilitation facilities are located throughout the Commonwealth. Facilities provide a variety of services. Danvers, Westborough, Boston, Abington, Ashby, Westminster, Foxborough, Braintree, Sudbury, North Reading, Quincy, Wilmington, Plymouth, Weymouth, Rockland, and Worcester all have such facilities.

Are there any incentives for municipalities to have a Substance Rehabilitation or Treatment Facility?

The Town is not aware of any state or other incentive programs specific to this medical use. As discussed above, property owners have the right to develop and use their property in compliance with local zoning, and certain non-profit charitable organizations are exempt from real estate taxes. Without clear Zoning Bylaw provisions designating what is allowed and what is not allowed in all areas of the Town, there is sufficient ambiguity to put Westwood at risk of the uncontrolled development of medical facilities with potential negative implications for adjacent neighborhoods or the Town as a whole.

Is there a law that requires municipalities to zone for Substance Rehabilitation or Treatment Facilities?

[M.G.L. Chapter 40A](#) is known as the Zoning Act. This law details municipal zoning requirements. Chapter 40A, Section 3, along with the Federal Americans with Disabilities Act, the Federal Rehabilitation Act, and the Federal Fair Housing Act, specifically prohibits discriminatory prohibitions affecting disabled persons.

Paragraph 4 of M.G.L. Chapter 40A, Section 3 reads:

“Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination. The provisions of this paragraph shall apply to every city or town, including, but not limited to the city of Boston and the city of Cambridge.”

Courts in Massachusetts and in other states have found that people with conditions warranting substance rehabilitation or treatment must be considered disabled and thus subject to protection from discrimination. Some case examples include: South Middlesex Opportunity Council, Inc. v.

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Town of Framingham, Granada House, Inc. v. City of Boston, Spectrum Health Systems, Inc. v. City of Lawrence, U.S. v. City of Baltimore, and Brockton Fire Department v. St. Mary Broad Street, LLC.

Can University Station be forced to have a Substance Rehabilitation or Treatment Facility?

The University Station development is controlled by the UAMUD section of the Zoning Bylaw and by the related Development Agreement endorsed by the Town and the developers. The permitted uses set forth in the UAMUD for University Station include “Office of Healthcare Professional” and “Medical Center or Clinic”, where definitions for these uses specifically exclude “Hospitals” and “Substance Rehabilitation or Treatment Facilities”. Changes to these definitions, or amendments to the UAMUD to add either of these currently prohibited uses, would require analysis of the terms of the Development Agreement to ensure that such changes would not invalidate other beneficial provisions.

Are there any medical facilities proposed such as Substance Rehabilitation Facilities or Medical Centers?

The Town has not been made aware of any proposals for “Substance Rehabilitation or Treatment Facilities” anywhere in Westwood. However, since the development of University Station, there has been additional interest in the siting of new “Medical Centers or Clinics”, and “Offices of Health Care Professionals” in various locations throughout Town.