

If any of these conditions cannot be met, Section 11.108 allows the Planning Board to issue a special permit to waive them. If, however, those conditions are met the Planning Board has no jurisdiction over the project. Therefore, as the recent development proposed at Massachusetts Avenue at Russell Street met the Overlay District standards, only relief from the base district requirements were necessary and the BZA had jurisdiction. On Hollis Street, however, the base district requirements were met but Overlay District requirements were not; therefore the Planning Board had jurisdiction to waive certain facade design requirements imposed by the Overlay District.

The several lubrication and car repair proposals that have surfaced for several gas station sites along the Avenue are a hybrid circumstance. Normally, in the BA-2 District "Automobile Service Station" is a special permit use that requires approval from the Board of Zoning Appeal. However, Section 11.106 of the Overlay District does not permit that use on that portion of the ground floor of any building in the District facing a public street. To permit that use the Planning Board must issue an Overlay District special permit. In that circumstance the Planning Board can issue both the Overlay District special permit waiver and the base district use special permit, normally issued by the BZA. While it would clearly be more cumbersome, a proponent could seek the Overlay District permit from the Planning Board and the use permit from the BZA; the BZA in no circumstance can issue the Planning Board Overlay District permit.

One further point. Some requirements of the Overlay District, like the height limit of 60 feet, may not be waived by the Planning Board. In that case any project wishing to exceed 60 feet in height would have to seek a variance from the Board of Zoning Appeal, as would be the case in any other zoning district.

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Post-It [®] Fax Note	7671	Date	# of pages 2
To	M. Brannan	From	Les Barber
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Phone #	617-3520	Phone #	
Fax #	864-3520	Fax #	

SUSAN B. SCHLESINGER,

Assistant City Manager for
Community Development

February 12, 1996

To: Stuart Dash

From: Les Barber

RE: Special Permit Granting Authority within the Massachusetts Avenue Overlay District

The Overlay District establishes certain provisions in the Zoning Ordinance that modify the requirements of the base zoning districts that occur along the Avenue, principally Business A-2 and Business C districts. Other of the base districts' requirements, whether limitations on use or dimensional standards, remain unmodified by the Overlay District provisions.

There are provisions of the Overlay District that may be waived after the issuance of a special permit; that special permit is issued by the Planning Board. Those are the only special permits that are within the jurisdiction of the Planning Board. For any development meeting all the requirements of the Overlay District no Planning Board Special Permit would be required. However, a special permit or variance from a base district requirement could still be required; those permits would be issued by the Board of Zoning Appeal, as they would if no Overlay District existed. The Overlay District in no way transfers authority to the Planning Board for any and all relief that may be required for a project.

However, the Zoning Ordinance in Section 10.45 allows the Planning Board to issue BZA special permits and variances if the Planning Board is issuing one of its own special permits. An applicant may choose to have the Planning Board issue its Overlay District Special Permit and the BZA to issue its own permits in separate proceedings.

The Overlay District establishes three categories of conditions that may be waived by special permit from the Planning Board:

1. A requirement that the required or provided front yard of a lot or building be landscaped in a prescribed manner;
2. A requirement that the ground floor of a building be devoted to a limited range of uses; and
3. A requirement that building facades facing a public street be designed in a particular way.

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Consent Communication #20

S-109

Communication was received from Michael
Brandon transmitting correspondence
regarding the special permit granting
authority within the Massachusetts
Avenue Overlay District.

In City Council February 26, 1996

Referred to Unfinished Business
Number 16.