



Town of Lexington

PLANNING BOARD

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REPORT TO THE 2009 SPECIAL TOWN MEETING

ARTICLE 4

AMEND ZONING BYLAW IN THE CB ZONE

RECOMMENDATION

The Planning Board recommends that Article 4 be **APPROVED**.

Background

Proposal: This article was initiated by the Lexington Center Committee, which is appointed by the Board of Selectmen, as part of its ongoing study of changes that may promote vitality and business development in the Center Business district. The goals of the zoning changes are to allow a greater variety of uses, establish reasonable regulations and clarify the language of the Zoning Bylaw. This article would amend Sections 135-8, 135-16 and 135-71B of the Zoning By-Law.

Background: The Lexington Center Committee began working on possible changes to the Zoning Bylaw in December, 2008. A subcommittee of Center Committee members and staff was formed and met bi-weekly from May through October, 2009 to consult with commercial brokers, landowners and business owners to discuss the possible changes.

It was determined by the subcommittee that changes to the use table in Section 135-16 would encourage food establishments to locate in the Center, while continuing to regulate all necessary aspects of their operations. Many aspects of the food establishment industry are regulated outside the Zoning Bylaw, including noise, trash odors and disposal, and food safety. Additionally, the landscape of the food-service industry is changing, expanding service types to include fast-casual restaurants, restaurants with catering and takeout components, and specialty gourmet food shops with on-site preparation. Simplifying definitions to permit these multiple uses is an initial step to modernize the zoning code.

The subcommittee determined that other commercial uses that are not currently allowed should be allowed in the center, such as an advertising office; dry cleaner/laundry; post box services; artisan work; lawn and garden supplies and equipment; and indoor athletic and exercise facilities.

A new definition for "Center Storefront" was created to allow offices to be located on the first floor in the Center, as long as they do not have frontage on a public way or public parking lot. Offices would continue to be prohibited in storefront spaces (as defined).

The other proposed bylaw change is to exempt the Center from the traffic special permit provisions, Section 135-71B. The Center Committee wishes to increase the vitality of and reduce the vacant space in the Center. The traffic special permit section (135-71) would require 12

buildings in the center to develop a detailed traffic study and apply for a special permit with site plan review in order to renovate their vacant space. Uses with 10,000 or more square feet of gross floor area would remain subject to the special permit provisions of the bylaw.

PUBLIC HEARING

A duly advertised hearing was held on October 21, 2009 in the Selectmen's Meeting Room of the Town Office Building. Mr. Zurlo opened the public hearing on the Center Committee's proposed amendments to the Center Business (CB) District.

Supported by a PowerPoint slide show, Mr. Jerry Michelson and Ms. Pamela Shadley explained the proposed changes to the Zoning Bylaw. The Center Committee proposed to amend Chapter 135 of the Code of the Town of Lexington, the Zoning Bylaw, by:

1. Amending the permitted uses in the Central Business (CB) District
2. Adding definitions thereto including STREET LEVEL FLOOR, and ARTISAN WORK;
3. Exempting the Central Business (CB) District from Section 135-71B (Article XII, Traffic); and
4. Making technical corrections to maintain consistency with the above changes and updating references.

Audience Questions and Comments

Mr. Nyles Barnert, ZBA Chair, opposes the change that restaurants and take-out food be allowed by right and not by special permit. Mr. Barnert suggested that this prevents the ZBA from adding conditions for things like hours of operation; delivery trucks, cooking odors; dumpsters; aesthetics/beautification issues (planters). The only downside of a Special Permit is it may take three months.

Mr. Barnert discussed the storefront issue, which the ZBA dealt with last month in a specific case. The ZBA decided it was a dimensional (not a use) variance and it was granted. The process worked, but they would prefer special permit granting authority.

Mr. Jerry Michelson responded that the Board of Health regulates cooking odors and dumpsters in existing and proposed restaurants in town, and that other issues could be covered in the Victualer's Permit granted by the Board of Selectmen.

Ms. Dawn McKenna talked about the unintended consequences of some of the changes. There is a disconnect between proposed athletic facilities and the parking bylaw: the amount of constant in and out; the users of the gym or athletic facility do not shop after the work out. It puts a burden on the parking spaces for a short-term use. Ms. McKenna also had a concern about the fall Town Meeting; the proposed zoning changes sometimes are rushed, as many people are away for the summer, so it makes it difficult to receive proper feedback from the public and Planning Board.

Mr. Larry Smith of the Chamber of Commerce supports this article; many of the ideas have been ignored by Planning Board and staff for 20 years. There has been selective enforcement of the current bylaw (fast food or take-out). Changing the definitions is most important.

Mr. Richard Canale responded to Mr. Barnert's points: he is trying to figure out what reasonable conditions should be imposed and correspondingly what level of review would be necessary (by right versus Special Permit versus plan review).

Pam Shadley feels that most of the Zoning Bylaw is very outdated; these definitions are not the final word; the subcommittee recommended that the entire Zoning Bylaw be revised in the near future to meet today's culture.

Mr. Canale asked if the Zoning Enforcement Officer was consulted on this. Susan Yanofsky reported that the Building Commissioner was consulted and he was comfortable with the changes, although he is currently out on medical leave.

Mr. Zurlo closed the hearing at 8:25 p.m.

BOARD DELIBERATIONS

At its public meeting on November 4, the Planning Board deliberated on the proposed amendments. There were four areas of concern as follows:

1. The unexplored impacts on other districts. The Center Committee only considered how the uses would affect the CB district, yet changes in definitions affect all the districts. While the Board had concerns about the collateral effects, they felt they could support the changes with the understanding that any changes or clarifications that might be needed would be addressed at the Annual Town Meeting in the spring. The Board agreed they would take on this work.
2. Catering as a primary use. The Board felt that this was not appropriate as a stand alone use. The Board felt that it need not be limited to the 25 percent maximum for an accessory use, but should not be a primary use. The Board decided to propose an amendment allowing catering only when in conjunction with substantial retail food use including restaurants, take-out and fast food establishments.
3. Office use on the street level. Although most of the Board members agree in concept with what the Center Committee is trying to accomplish, this is not an easy thing to draft. They were not comfortable with drawing an arbitrary line between storefronts on public and private areas. There were concerns about the clarity of the proposed amendment. In the end the Board felt that requiring a special permit might provide a level of control and protection.
4. Allowing food uses by right, without a special permit. Arguments have been made that there are many levels of control and permitting on food uses without needing a special permit and that the amount of time required to obtain a special permit can be a disincentive for businesses who want to locate in the center. In the end the Board felt they could support removing one barrier, a special permit granted by the Zoning Board of Appeals, to businesses, as long as adequate review and controls are in place. They agreed that they should investigate having a site plan review process for these uses and will discuss this further with the Zoning Board of Appeals, Design Advisory Committee and the Board of Selectmen. This may be part of a more expansive look at permitting in Town.

The Planning Board voted to support the article conditional on two amendments being accepted – one that would allow catering in the Center only in conjunction with substantial retail food use, and one that would require a special permit for street level office use in the Center. Mr. Canale was opposed to allowing any street level office use in the Center and so did not support the Center Committee’s amendments on street level offices of line 6.21 of the Table of Uses, but did vote to support the rest of the Planning Board’s position.

The Planning Board’s amendments were brought to the Center Committee prior to the article coming to the floor of Town Meeting. The Center Committee agreed to the changes suggested by the Board and incorporated them into their motion, so the Board does not need to offer amendments and recommends the article to Town Meeting.

MOTION

The Center Committee is responsible for the motion.

RECORD OF VOTE

The Planning Board voted to recommend approval of Article 4 to Town Meeting.

Members in Favor of the Recommendation:

Gregory Zurlo

Anthony Galaitsis

Charles Hornig

Wendy Manz

Richard Canale*

* Mr. Canale was in favor of Article 4, with the exception of section 2 that would allow street level office use in the Center. He does not support this.