



Town of Lexington

PLANNING BOARD

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RECOMMENDATION REPORT OF THE LEXINGTON PLANNING BOARD ARTICLE 12: AMEND ZONING BYLAW – FINANCIAL SERVICES

RECOMMENDATION

The Planning Board unanimously recommends that Town Meeting APPROVE the motion under Article 12: Financial Services. On Wednesday, September 23, 2020, after a series of public hearings, the Planning Board voted to recommend favorable action with a vote of five (5) in favor, zero (0) in opposition, and zero (0) in abstention for Article 12: Financial Services.

BACKGROUND

A Zoning Amendment in 2016 required a special permit for a bank use in the Central Business District where it had previously been permitted by-right. At that time, Automatic Teller Machines (ATMs) were thought of as an accessory use attached to a larger bank. They were not generally regarded as competition for active storefronts.

In 2019, the Building Department received an application to locate several ATMs in a Lexington center storefront. At that time, Banks or Credit Unions were allowed by special permit in the Center Business District, while ATMs were permitted by right. The Building Commissioner determined, and the Board of Appeals agreed (after an appeal), that a special permit was required for standalone ATMs in the Center Business District because they constitute a banking use. Understanding that the Town did not support this proposal, the applicant did not apply for the special permit.

The Building Commissioner considers a standalone ATM to be an electronic branch of a bank. This is an interpretation of the by-law, and as such, may not be defensible should another applicant appeal the determination to the Court.

At the request of the Center Committee, the Planning Board sponsored a zoning amendment at the 2019 Special Town Meeting to change the ATM use in the Center Business District from a Y to N in the use table in case the Town's interpretation of the bylaw was overturned. In the Planning Board's Article 6, Recommendation to Special Town Meeting in 2019, the Board stated that this was a stop-gap measure in a rapidly changing industry.

This Zoning Amendment more broadly defines banks as banking services to encapsulate the evolving industry and removes ATMs from Table-1, Permitted Uses and Development Standards, since a traditional ATM as we consider it today is explicitly considered a banking service.

Also, this zoning amendment contemplates delivery of banking services to persons in a car by adding the use "Banking services delivered to persons in a car" to Table-1, Permitted Uses and Development Standards. The purpose of this addition is to prevent

curb conflict, which may encourage double parking and impair safety on Lexington streets. This is intended to be a forward-looking bylaw, which addresses potential issues with the evolving delivery industry.

PUBLIC HEARING PROCESS

Due to COVID-19, all of the zoning articles initially scheduled for the 2020 Annual Town Meeting scheduled were postponed to a Fall 2020 Special Town Meeting. Due to the length of time between the Annual and Fall Special Town Meetings, the Planning Board was required to hold new public hearings. To ensure all information heard during the public hearings has been communicated, this section of this report provides a review of the public hearings held for the 2020 Annual Town Meeting and the 2020 Fall Special Town Meeting-2.

Annual Town Meeting Public Hearing Proceedings (January – March 2020)

On Wednesday, January 22, 2020, after the publication of the legal advertisement in the Lexington Minuteman Newspaper on January 2, 2020, and January 9, 2020, and notification sent to parties of interest, the Planning Board opened its public hearing for Article 38, Financial Services. The Planning Board voted to close the public hearing on January 22, 2020, and made a favorable recommendation to the Annual Town Meeting of 2020 on March 5, 2020.

JANUARY 22, 2020

Robert Creech opened the public hearing at 9:29 p.m. for the Financial Services Annual Town Meeting Article.

Charles Hornig provided an overview of the Financial Services Town Meeting (ED-K: Financial Services). Such review included the background for such an amendment, the need for the amendment, and the proposed language.

The Planning Board briefly discussed the proposed topic and the article.

Mr. Creech opened the floor for public comment. The following comments were provided:

- A statement of support for the proposed article, with a request for clarification regarding accessory uses of ATMs.

The Planning Board provided additional comments. Ginna Johnson questioned if the Center Committee had reviewed the draft article and whether they were OK with it or not. Mr. Creech responded that he had emailed a copy of the proposal to Center Committee members Michelson, Levin, and Beaudette some weeks earlier and had received no reply. He said that he would follow up.

Charles Hornig moved that the Planning Board close the public hearing at 9:45 p.m. for the Financial Services Article for Annual Town Meeting. Robert Peters seconded the motion. The Planning Board voted in favor of the motion 5-0-0. MOTION PASSED

Charles Hornig moved that the Planning Board vote make a favorable recommendation to the Annual Town Meeting on the Financial Services Article.

Richard Canale stated that he would like to think about the language before voting.

The motion was not seconded. MOTION FAILED

Mr. Creech requested a straw poll to determine the will of the Planning Board. Members of the Planning Board support the article with a few minor edits.

FEBRUARY 12, 2020

The Board will discuss a letter from the Center Committee at the next meeting.

MARCH 5, 2020

Charles Hornig moved that the Planning Board vote to accept the Planning Board's Report to Annual Town Meeting on Article 38: Financial Services. Ginna Johnson seconded the motion. The Planning Board voted in favor of the motion 5-0-0. MOTION PASSED.

Charles Hornig moved that the Planning Board vote recommend favorable action to Annual Town Meeting on Article 38: Financial Services. Richard Canale seconded the motion. The Planning Board voted in favor of the motion 5-0-0. MOTION PASSED.

Fall Special Town Meeting Public Hearing Proceedings (September 2020)

On Wednesday, September 9, 2020, after the publication of the legal advertisement in the Minuteman Newspaper on August 20, 2020, and August 27, 2020, and notification sent to parties of interest, the Planning Board opened its public hearing for Article 12: Financial Services. A continued public hearing was held on Wednesday, September 23, 2020. At such time the Planning Board closed the public hearing and made a favorable recommendation to the 2020 Special Town Meeting-2.

SEPTEMBER 9, 2020

Robert Creech, Chair, opened the public hearing for the Financial Services Town Meeting Article. Mr. Creech stated that the Center Committee voted unanimously 7-0-0 to support the Article last week.

Charles Hornig presented a brief overview of Article 12, Financial Services. Mr. Hornig stated such an article is in reaction to recent business practices around the operation of banks.

Members of the Planning Board provided support for the proposed article.

All comments and discussions during the public hearing process can be reviewed on the video stream capture of the public hearing and the associated meeting minutes.

ARTICLE MOTION & PROPOSED LANGUAGE

That the Zoning Bylaw, Chapter 135 of the Code of the Town of Lexington, be amended as follows (~~struck through~~ text is to be removed and underlined text is to be added), and further that non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Code of the Town of Lexington:

A. Amend § 135-3.1.6 so that it reads:

~~3.1.6 Banks and Credit Unions and Real Estate Sales or Rentals Services in CB District Center Storefronts.~~

1. Purpose. Lexington Center is a place in which shops, workplaces, schools, historic attractions, housing, open space, and civic facilities intimately co-exist to create an active retail and cultural destination with an identifiable sense of place. It is in the public interest that the Town protect and enhance the vibrancy of the Central Business District by creating a supportive environment for a diverse group of uses throughout the Center, and regulating the use of the limited first floor storefront area and frontage of the Central Business District is necessary to achieve this goal.
2. Special Permit Review Criteria. In addition to the criteria detailed in § 135-9.4.2, as a precondition to allowing the establishment, relocation, or expansion of a ~~banking or credit union~~ banking or real estate service use (Line H.1.05 and Line H.1.04 respectively in the Table of Uses) in a ~~center storefront the Central Business District~~, the SPGA must also find that the applicant has satisfied the specific criteria listed below:
 - a. The granting of the special permit will advance the goals expressed in § 3.1.6.1 above;
 - b. The proposed use in the proposed location is in the public interest;
 - c. The proposed use will not create an undue concentration of these uses in the immediate area;
 - d. The proposed use will maintain hours and days of operation and an active storefront consistent with other retail uses in the Central Business District;
 - e. The proposed length of the storefront will not exceed the average length of other ~~center storefronts in the Central Business District~~;
 - f. The proposed first floor square footage will not exceed the average size of other ~~center storefronts in the Central Business District~~; and
 - g. As part of providing a visually engaging storefront, the interior area of the property adjacent to the storefront must be a space dedicated for patrons and shall not be used for office, cubicle, conference, or storage areas.
3. The SPGA may waive strict compliance with criteria 2e and 2f above, where such action is in the public interest and consistent with the intent and purpose of this bylaw.

B. In § 135-10.1, add a definition of BANKING SERVICES:

BANKING SERVICES

A bank, credit union, or any branch thereof, including electronic branches such as automatic teller machines and cash dispensers.

C. Amend row H.1.05 of Table 1, Permitted Uses and Development Standards, so that it reads:

		GC	RO	RS	RT	CN	CRS	CS	CB	CLO	CRO	CM	CSX
H.1.05	Bank or credit union <u>Banking services</u> <u>*SP in center storefront</u> (see § 3.1.6).	N	N	N	N	N Y	Y	N SP	SP Y*	Y	Y	Y	N SP

D. Delete rows H.1.06 and H.1.07 of Table 1, Permitted Uses and Development Standards.

		GC	RO	RS	RT	CN	CRS	CS	CB	CLO	CRO	CM	CSX
H.1.06	Bank or credit union with drive-up window or auto-oriented branch bank	N	N	N	N	N	SP	N	N	N	Y	Y	N
H.1.07	Automatic teller machine	N	N	N	N	SP	Y	Y	N	Y	Y	Y	Y

E. Add a new row H.2.03 to Table 1, Permitted Uses and Development Standards, as follows:

		GC	RO	RS	RT	CN	CRS	CS	CB	CLO	CRO	CM	CSX
H.2.03	<u>Banking services delivered on site to persons in a car</u>	N	N	N	N	N	SP	SP	N	N	Y	Y	SP

Planning Board Vote

Charles Hornig moved that the Planning Board recommend favorable action for Article 12: Amend Zoning Bylaw – Financial Services, as presented. Richard Canale seconded the motion. The Planning Board voted in favor of the motion 5-0-0. MOTION PASSED

- Robert Creech yes
- Robert Peters..... yes
- Ginna Johnson..... yes
- Richard Canaleyes
- Charles Hornig yes

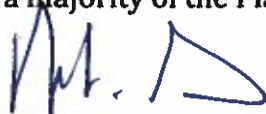
Record of Vote

On May 13, 2020, the Planning Board voted to allow the Planning Board Chair to sign documents on behalf of the Planning Board.

Charles Hornig moved that the Planning Board vote to allow the Chair of the Planning Board to sign all documents for the Planning Board during the COVID-19 State of Emergency. Robert Peters seconded the motion. The Planning Board voted in favor of the motion 5-0-0 (Roll Call: Robert Peters – yes; Charles Hornig – yes; Richard Canale – yes; Ginna Johnson – yes; and Robert Creech – yes). MOTION PASSED

Signature of the Planning Board

Signatures of a majority of the Planning Board,



Robert Creech, Chair