

May 1, 2009
Richard Canale and Anthony G. Galaitsis
Acting as Town Meeting members

ARTICLE 49

**REZONING CRO and RO to CD
95-99 HAYDEN AVENUE, 124-128 SPRING STREET**

RECOMMENDATION

**Richard Canale and Anthony G. Galaitsis recommend that Article 49 be
DISAPPROVED.**

BASIS OF RECOMMENDATION of Richard Canale and Anthony Galaitsis

Last year, the Planning Board recommended to Town Meeting that rezoning to a higher floor area ratio in the CM zone should not occur until further study was done; Board members agreed “they did not want to plan parcel by parcel, but wanted to put forth a comprehensive plan with a vision for the area.” The Board worked all year to present a comprehensive array of zoning amendments that form a structure in which impacts of increased commercial intensity can be addressed through mitigation and other controls. Town meeting approved that rezoning

The Board chose to confine its efforts to the CM zone in the Hartwell Avenue area. The Spring Street/Hayden Avenue area was thought to present different planning challenges because of its closer proximity to residential neighborhoods. It was felt last summer that more commercial property owner and residential community input would be needed to find what intensity of use might be appropriate and what level of protection would be required in this area. The Board did not work on an overall plan for the Spring Street/Hayden Avenue area this year.

Mr. Canale and Mr. Galaitsis believe that it is only consistent and fair for the Board and Town Meeting to insist that this Spring/Hayden commercial area get equitable attention and that we develop a parallel process for allowing controlled growth and traffic management. Mr. Canale and Mr. Galaitsis agree that the Board should put forth a comprehensive plan with a vision for the area.

The CD procedure is intended to permit the Town Meeting to approve development standards unique to a particular location and not applicable to other locations in Town. One of the objectives of a planned development district is to provide information for the Town to evaluate the potential impacts of a proposed development. The VISION 2020 Economic Task Force studied current mechanisms that encourage or discourage good economic growth. They, along with other stakeholders, concluded that the CD process is lacking because the outcome is not predictable nor is their assurance that applicants would be treated equitably. The Planning Board is attempting to provide alternative ways for increasing commercial development that are transparent, predictable, and equitable to commercial land owners and residents alike.

In the meantime, the CD process remains in effect, and it is incumbent upon the Planning Board to act favorably on any “special” proposal that would qualify it in the absence of an area plan.

Mr. Canale and Mr. Galaisis believe that the Ledgesmont proposal does not contain enough positive outcomes to compensate for its deficiencies. Particular deficiencies (such as visual intrusion on both public and private adjacent spaces and intrusion close to vegetated wetlands, uncertain levels of mitigation and projected traffic flow, unenforceable TDM measures, and lack of certain zoning safeguards) might be reduced with both on-site improvements and planning that considers a certain level of growth and control for the area. We urge Town Meeting to insist on this and we encourage Beal to work on a new Plan that removes these deficiencies.

BACKGROUND

The proposed rezoning would allow for the construction of a third building on the property of approximately 294,000 square feet gross floor area and 128,950 square feet net floor area, and the construction of an additional 415 parking spaces, nearly all of which would be within the Ledgesmont 3 building. The property is owned by The Beal Companies, LLP (Beal). The proposed office building would be part of the Ledgesmont Corporate Center site and is intended to complement existing buildings currently located on the property that house office space and space devoted to research uses.

The 36.2-acre site is located on the northern side of Hayden Avenue at its intersection with Spring Street. It is bounded on the north by single-family residences on Spring Street, Munroe Road and Woodcliffe Road; on the east by Cubist Pharmaceuticals, Inc at 65 Hayden Avenue; on the south by 80 Hayden Avenue, LLC; and to the west by Spring Street and the Lexington Technology Park owned by Patriot Partners. Two office/research and development buildings with 1,121 parking spaces in two parking structures and surface parking now occupy the site. On three sides are commercial properties. The westbound on-ramp to Route 2 is within 600’ of the Hayden Avenue driveway. The northeastern edge of the site is zoned for residential use and single-family houses abut the property.

This site was the subject of a rezoning petition in 2003 at Town Meeting. The petition was withdrawn after not receiving the support of the Planning Board and the Selectman. At that time, a major issue was the intensity of the proposal. Thinking has evolved since that time, and many are receptive to increasing intensity of commercial development if it comes with some level of control.

(For a more detailed report on the project see the Planning Board's zoning and site development analysis.)

ISSUES

Planning consistency and fairness are among the most important issues in this application. The Planning Board unanimously recommended last year to Town Meeting that they not up-zone the CM district until a comprehensive public-process study and plan was completed to a sufficient

level to bring to Town Meeting. It would be consistent in this case for the Planning Board and Town Meeting to do the same in South Lexington. Furthermore, it has been stressed that a cornerstone going forward is the need for predictability. We noted the 2003 Planning Board's recommendation. The only essential event that has changed since that time has been the willingness to accept more intense commercial development. If we factor in this new reality, there are still several other shortcomings noted in that 2003 Report that have not been addressed by the applicant. Among them are the need to place some greater number of parking spaces in reserve, prohibit extreme traffic generating uses, the need for effective transportation management that encourages alternative transportation, and visual intrusion. The 2003 Planning Board Report is on file at the Planning Department Office.

If this particular proposal is approved as is, it would set an expectation for a set of standards that other landowners in South Lexington would hold. One might conclude that they should expect the same treatment if they were to seek rezoning. It appears to Mr. Canale and Mr. Galaisis (and to many others) that an overall district FAR of 0.35 is likely to not be sustainable. The Town needs to plan for what impacts would arise at that and at lesser area-wide FARs and figure how we would go about trying to resolve impacts. Some Planning Board members feel that the Town should exclude CD parcels from any district zoning, regulations, or traffic plans because of their very nature. But, impacts from increased development on the Town's infrastructure and livability don't differentiate because of the underlying zoning. Four thousand cars per day at an office zoned as CRO creates the same impacts as 4,000 cars per day at an adjacent office CD zoned parcel.

Traffic is, as always, one of the major concerns regarding increased development. The total anticipated daily traffic generated on this site upon full occupancy will be in excess of 4,000 trips per day. The proposed development would add 415 parking spaces and 128,950 square feet of net floor area. How this would translate into traffic on local roads was the subject of considerable debate by the Planning Board. Also of concern was how measures offered in a Memorandum of Understanding would be effective in reducing single-occupancy vehicles and encouraging multi-modal transportation. Mr. Canale and Mr. Galaisis want to see the Town adopt a proactive approach to traffic mitigation by making plans for physical improvements to the transportation network and infrastructure before they were needed, rather than waiting for the development to occur and then attempting to make improvements on an ad hoc basis. This would begin with an area transportation plan funded in part or whole by the Town or with existing or impending mitigation funds. More information is needed on the nature of existing traffic as well as projected traffic. With a location relatively close to Alewife Station, the district plan should include much stronger commitments to transit by both the Town and landowners. Increased density could be justified if the Plan included significant and enforceable commitments to reducing the number of vehicle trips.

Neighbors raised concerns with the visual impact on private residences and on the abutting public conservation land and on the public view on Spring Street. While some issues were partly addressed by the applicant, such as increased plantings and the use of automatic window shades, Mr. Canale and Mr. Galaisis believe that the building would be too large and too close to the wetlands. Although it would have a height of 51 feet and have 4 stories and three levels of parking, it would be the tallest building in Lexington at 86 feet from base to roof line (not

counting up to 20 feet of roof structures on one-fourth of the roofs), and would have the appearance of being 6-8 stories from several public and private spaces. The views from Spring Street were never fully explored and would have an impact on all who traverse the Town.

The Board discussed their responsibility for balancing the rights of the both the residential and commercial owners along with the interests of the Town and the interests of the neighbors. Beal has exhausted its present by-right privileges to build more buildings on its site and they have no inherent right to build anything more. They are legally nonconforming and are able to fully operate with their present configuration. Beal has the right, as do all landowners, to seek to rezone their land to allow increased intensity of use. Zoning was instituted to protect the property of others, so whenever we rezone to increase the intensity of use on one property we must consider and ensure we protect the rights of abutters.

One issue that has not received a lot of attention is that part of the proposal that zones residential land to commercial. In this case, the amount of land is small in comparison to the total area, so it does not particularly advantage the applicant. But it does set off potential precedents for creeping commercial zones. In the case of Patriot Partners, their rezoning of residential land to CD for conservation purposes had the support of abutters, the developer, and the Town as there was a solid rationale that it would create more of a firewall to stop potential encroachment into the residential area. That is not the case here. The applicant did not work with the Board or the abutters to reach consensus, but unilaterally included the residential rezoning in the PSDUP. Greater discussion needs to occur whenever a change from residential to commercial or vice-versa is proposed.

Last year, the Planning Board cited a major concern for safety in the CM area of the existing streets for pedestrians, bicyclists, and public transit users. Obviously, that is compounded for the South Lexington area. The scope of the corridor improvements underway in the Spring Street area doesn't include a plan to resolve how Spring Street will be made safe for all users. That need will be ongoing and funds will need to be made available to continue the next phase of planning and implementation. In the same way that commercial land owners need and seek consistency and predictability, residents should be afforded the same level of consistency and predictability. Residents rightly need to know that mitigation money will be invested in making area-wide transportation plans effective and safe and welcoming to residents and employees alike.

In the end, Mr. Canale and Mr. Galaisis believe that the benefits to the Town of increased revenue (leading to tax relief for residential properties) and of job opportunities did not outweigh the rezoning impacts, especially considering that these impacts could not be quantifiably placed in context or that the amount of mitigation and traffic management could not be assessed for adequacy. Mr. Canale and Mr. Galaisis continue to believe that checkbook zoning allowing new development simply for new revenue, is not good policy. However, if this site is carefully planned so that the benefits to the Town and all its citizens accrue beyond the totality of its detriments, Mr. Canale and Mr. Galaisis would likely wish to see that the Town Meeting be able to decide on any such Plan. We believe that the Town shares a portion of that responsibility to set clear standards and controls for any potential development in Town. We hope that Beal will work with the Town to create a win-win situation.