



Town of Lexington

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REPORT TO THE 2011 ANNUAL TOWN MEETING

ARTICLES 39 and 41

Zoning Bylaw Amendments

March 2011

The Planning Board Report to Town Meeting conveys the Planning Board's positions on these articles. It contains details regarding the proposals that are intended to inform decision-making and to provide helpful knowledge to the public and all interested parties.

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RECOMMENDATION

The Planning Board recommends that the motion under Article 39 be **APPROVED**.

BACKGROUND

Currently under §135-71B of the Zoning Bylaw, the renovation of a building on a lot with existing buildings totaling 10,000 square feet or more triggers a traffic study and a ruling by the Special Permit Granting Authority (SPGA) regarding adequate traffic capacity. Complying with §135-71B is a huge commitment as all streets and intersections affected by traffic from the development must be brought up to a level of service D or better in order for the SPGA to make a positive determination. This serves as a disincentive for maintaining and updating existing property, which can lead to the erosion of our commercial property base.

When Town Meeting established the TMO-1 District for the Hartwell Avenue area, it set up an alternative to the traffic study and special permit required under §135-71B that was less onerous. The TMO-1 District provides for a graduated level of participation in transportation management and mitigation, depending on the size and nature of a project. This option does not exist for the rest of the town. While there may eventually be a series of Transportation Management Overlay (TMO) districts covering the town, until that happens this change will help remove a disincentive for owners to refresh their properties.

The current bylaw does not have a definition of renovation, making enforcement problematic. The Building Commissioner must interpret the term and determine whether it encompasses all interior work or only major interior projects. The Board believes that interior renovation should not require a traffic study. However, the bylaw will still require a traffic study if parking on the site is increased by 25 spaces, with a total of 50 or more spaces, even in there is no expansion of the building.

Additional wording and format changes are proposed in order to make the section more understandable. The paragraph will be broken up into sub-paragraphs reflecting the formatting prior to translation to the General Code formatting. The addition of an “or” makes it clear that only one of the three factors needs to be present to require a special permit concerning adequate capacity. There is additional wording that makes it explicit that the section does not apply to those who opt to participate in the alternative available under the TMO district. This is already stated elsewhere in the Bylaw, but it is helpful to state it here as well.

PUBLIC HEARING

A duly advertised public hearing was held on March 9, 2011 in the Selectmen’s Meeting Room in the Town Office Building.

After a brief presentation on the motion, the hearing was opened for comments and questions. There were none so the public hearing was closed

After deliberations, the Planning Board voted 5 to 0 to recommend the adoption of Article 39.

MOTION

That the Zoning Bylaw, Chapter 135 of the Code of the Town of Lexington, be amended as follows (underlining shows additions, strike-throughs show deletions):

Remove the word “renovation” from §135-71B and reformat it; add the word “or” after subparagraph 2; and add “, or to developments in a Transportation Management Overlay District that elect to comply with the requirements of §135-43C” to the end of the final paragraph of the section, so that it reads as follows:

§ 135-71B. Applicability. No building permit shall be granted for the erection of a new building or the enlargement ~~or renovation~~ of an existing building with the result that:

- 1) There are 10,000 square feet or more of gross floor area on the lot, including any existing floor area, but not including any floor area devoted to residential use or to off-street parking, or
- 2) There are 50 or more dwelling units, or their equivalent, in a development, including any existing dwelling units, or
- 3) The number of parking spaces is increased by 25 or more and there are 50 or more parking spaces, including any existing parking spaces, on the lot,

unless a special permit with site plan review has been granted and the SPGA has made a determination that the streets and intersections affected by the proposed development have, or will have as a result of traffic improvements, adequate capacity, as set forth in § 135-73, to accommodate the increased traffic from the development.

The requirement for a special permit with site plan review (SPS) does not apply to a religious or nonprofit educational use, as described in § 135-9E(1). Notwithstanding the foregoing, the requirements of this Article XII shall not apply to the Center Business (CB) District, or to developments in a Transportation Management Overlay District that elect to comply with the requirements of §135-43C.

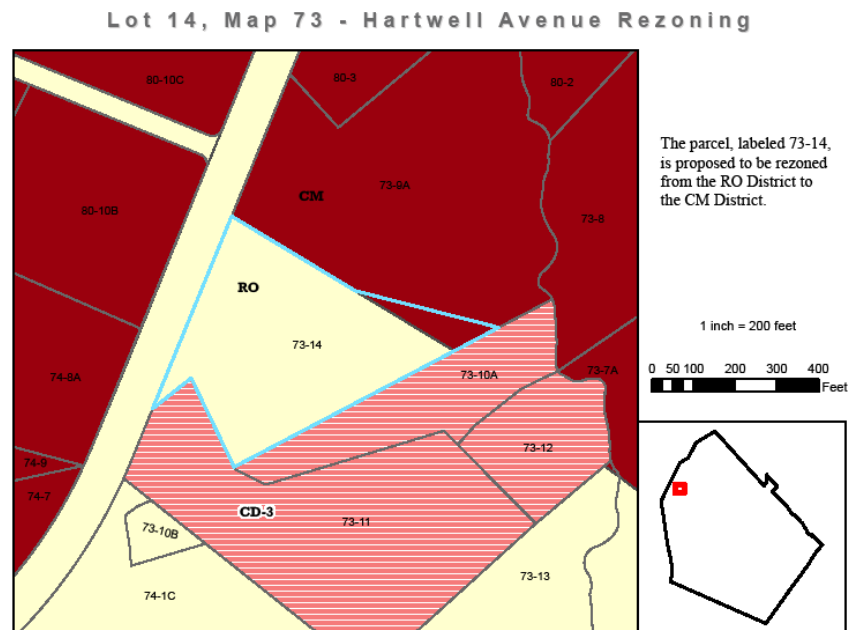
ARTICLE 41 HARTWELL AVENUE LAND TO CM ZONE

RECOMMENDATION

The Planning Board recommends that Article 41 be **APPROVED**.

BACKGROUND

Lot 14 on Assessors Map 73 (the Lot), on Hartwell Avenue, is a lot of approximately 5 acres currently zoned RO (residential) and surrounded by commercial zones. The Planning Board, at the request of the Economic Development Advisory Committee, is proposing that it be rezoned as a CM (commercial) parcel, in line with abutting properties zoned CM and CD-3.

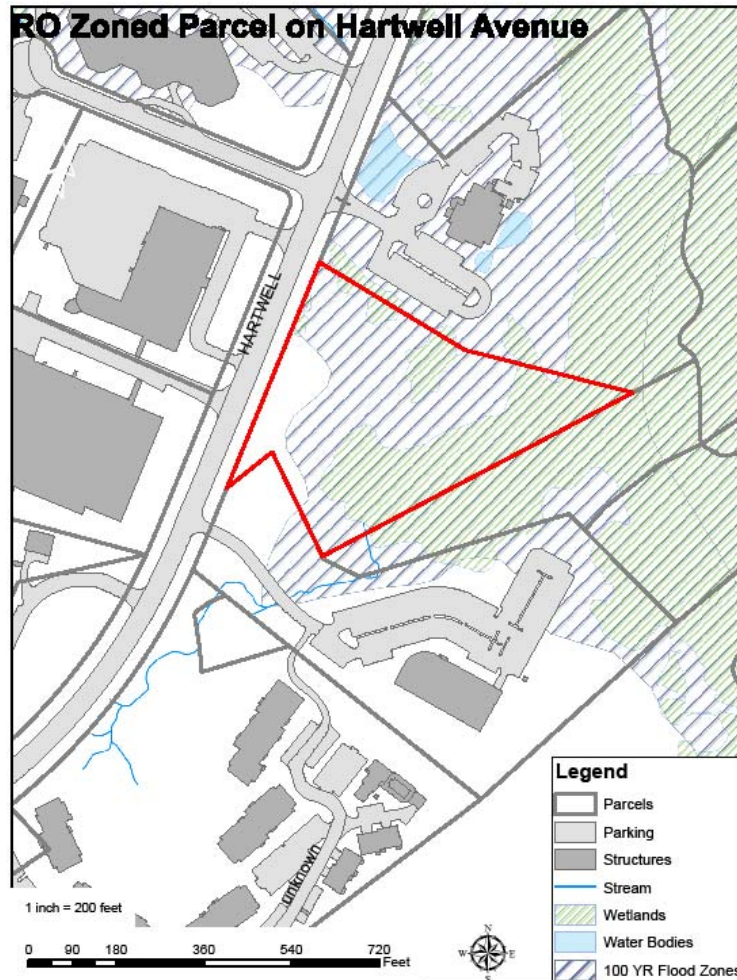


The Lot (see map above) is part of a parcel that includes the restaurant immediately to the north at 94 Hartwell Avenue (Lot 9A, Assessors Map 74). It is a vacant lot, wooded and wet. To the south is a laboratory/office building. To the rear is the Katahdin Woods conservation area. When lot 73-10A was rezoned from RO to CD-3 in 1982, the parcel was required to be permanently left as open space and it was purchased for a dollar by the town in 1989. The nearest residences are those of the Katahdin Woods apartment complex at the corner of Hartwell Avenue and Wood Street.

§135-54 of the Zoning Bylaw requires “[w]here a lot abuts a different zoning district or is across a street from a different zoning district, a landscaped transition and screening area shall be provided.” This means that the commercial developments across Hartwell Avenue from the Lot, should they decide to redevelop, would have to provide a transition area of 50 feet in depth along Hartwell Avenue as well as an effective year-round visual screen of a minimum height of six feet.

This doesn't make sense for the front yard of a commercial property. A rezoning of the Lot would allow the neighboring properties when redeveloping to locate buildings toward the street and put parking lots to the rear, in keeping with the changes recently adopted by Town Meeting for the Hartwell Avenue area CM district and the TMO-1 Overlay District.

The Conservation Commission has not delineated the wetlands, but it is clear that there are severe limitations on the use of this site. In addition to wetlands, a major portion of the lot is within the 100-year floodplain (see map below with wetlands based on topography.)



Based on discussions with the Assessors Office it appears that the land would have a higher value if zoned commercial and would be taxed at the higher commercial rate. Since the lot is classified as unbuildable, it would not represent a major change in revenue to the town. Although the adjacent property is owned by the same entity, due to the wetland/flood plain constraints, the Board expects the change to provide little to no additional development potential.

The owner is aware of the possibility of increased taxes and supports the rezoning of the parcel.

PUBLIC HEARING

A duly advertised public hearing was held on March 9, 2011 in the Selectmen's Meeting Room in the Town Office Building.

A brief presentation on the proposal was made by the Planning Director and then the hearing was opened to questions and comments. Mr. Ashok Patel, the owner of the Lot, was asked if he supported the rezoning, and he replied that he did. Mr. Horning commented that the Board had supported the rezoning of this parcel when they were considering zoning for the Transportation Management Overlay District, although due to time constraints it was not brought forward at that time. He saw no reason for the Board to change that support.

Mr. Fenn, who was before the Board for another rezoning, commented on the similarities between his proposal and this one, in that both sought rezoning from residential to commercial without a plan for the use of the property. There being no further comments the public hearing was closed.

After deliberations, the Planning Board voted 5 to 0 to recommend the approval of Article 41.

MOTION

Move that the Code of the Town of Lexington, Zoning By-Law and the Zoning Map of the Town of Lexington, be amended by changing the zoning district designation of that property shown as Lot 14 on Assessors' Property Map 73, now or formerly of Hartwell Hospitality, LLC, from RO (one-family dwelling) to CM (Manufacturing).

This report was accepted by vote of the Planning Board on March 9 2011.

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