



Planning Board

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REPORT TO SPECIAL TOWN MEETING RE: WARRANT ARTICLE 3, MAP AMENDMENT TO REZONE REMAINING LIMITED BUSINESS DISTRICTS AT BEDFORD MARKETPLACE TO GENERAL BUSINESS

Board Vote and Findings on Report to Special Town Meeting, Article 3

The Planning Board conducted the required public hearing on this warrant article on October 27, 2015 and heard testimony from 11 members of the public. The Board members deliberated at length and voted unanimously, by a 4-0 plurality (one member was absent) to recommend an affirmative vote on Article 3.

The Planning Board reached the following findings:

- 1) That the existing 2000 square foot limit on retail sales area is unrealistically low for this location and not conducive to reasonable and desirable business growth.
- 2) That simply increasing the 2000 SF ceiling in Limited Business does not offer a viable option, due to the fact that it would have to be changed in all Limited Business Districts along Great Road and North Road, where in some instances the current ceiling might be closer to being appropriate.
- 3) That the investment of major capital in the two new buildings B and C (the ones being constructed close to the street) makes their demolition and replacement by a "big box" store unlikely for the foreseeable future, and that maximum occupancy by a hypothetical single user in one of those structures would fall far short of the smallest footprint of a "big box" store.
- 4) That any further significant changes to the layout and building footprints at Bedford Marketplace would require a return to the Planning Board for a new regulatory approval in the form of site plan review.
- 5) That a zoning provision (the 2000 SF limit) that requires a hardship variance from the Zoning Board of Appeals for developments that would be welcome is not good zoning or zoning practice, and that the application of the Massachusetts hardship standard of soils, shape and topography to a single storefront is irrelevant in a shopping center.
- 6) That the proposed warrant article contributes to the overall viability of the Bedford Marketplace redevelopment, which in turn contributes to the broader objective of making key places in Bedford more walkable and compact in their development pattern, to strengthen village centers
- 7) That at some point in the future, it would be desirable to explore options for a new business district or a corridor overlay, in which alternatives other than just the Limited Business or General Business districts are offered.

- 8) That the zoning map amendment to rezone the remaining LB area at the Marketplace to General Business is a reasonable approach to address the immediate problem of the 2000 SF retail sales area cap.

Background Information/Purpose

Property Owner Ross Hamlin filed a landowner's zoning petition, via Attorney Pamela Brown, on Monday, October 5, in regard to rezoning the Limited Business district portion of the Bedford Marketplace to General Business. The selectmen, in voting on the entire warrant on October 12, voted to include the petition on the warrant by a 3-2 vote and referred the article to the Planning Board for mandatory public hearing. The Planning staff determined that the only possibility for holding a public hearing in advance of the November 2, 2015 special town meeting—while still complying with the law covering public notice and advertising—was to hold the hearing at the October 27 meeting of the Planning Board. The petition seeks to rezone the front "half" of this shopping center from Limited Business (LB) to the same zoning as the rear part of the property, General Business (GB). This is a map, not a text, amendment, changing the designation on the zoning map but making no further changes in the Bylaw. Due to the long-standing floor area limitation in Limited Business of 2000 square feet of sales area for most allowed uses (except for restaurants, banks and business or professional offices) a new tenant, Learning Express, had to seek relief during the spring of 2015. The Zoning Board of Appeals (ZBA) granted a variance for 3500 SF of "retail" use and 4000 SF of "indoor amusement."

The proposed rezoning from LB to GB would remove the 2000 SF floor area limitation. With some retailers and service businesses requiring a larger space footprint in today's retail environment, the petitioners feel that the 2000 SF ceiling is unrealistic and a considerable constraint to leasing out the expanded property. Their argument is that while LB might be appropriately protective for other locations along The Great Road and environs, including the 2000 SF limit, it no longer makes sense to impose the LB designation and 2000 SF maximum on a shopping center that is being significantly redeveloped to fit the space needs of the modern commercial real estate market, and which includes the construction of two new buildings close to the street. We have been informed that there is a now another prospective retail tenant whose space needs exceed the 2000 SF maximum.

The LB designation covering the entire front half of the property, it can be argued, is an obsolete concept decades after this zoning was first created. The alternative of bringing in each retail or service occupant for a hardship variance if their sales area exceeds 2000 SF can be seen as unreasonable, particularly in light of the extremely difficult hardship standard in MA zoning law (the "soils/shape/topography" triad). The original intent more than 50 years ago was to keep out what we now refer to as big box stores and devote the front half of Bedford Marketplace to smaller enterprises. This is an appropriate community planning objective, but the bar was set so low at a 2000 SF upper limit for retail sales that the gap between the small store and even the least big box store (typically >50K) probably has become unworkably wide.

Details of Amendment

As mentioned, the Bedford Marketplace always has been bifurcated by the LB zoning in the front, where (in the two old buildings) the Post Office, Luigi's, B. Goode, Bank of America and Bruegger's Bagels used to be, and GB in the rear, where Marshall's and Whole Foods are situated. The LB district here is part of a band of

LB zoning that runs between Hillside Avenue and the rear of the houses that front on Sunset Road. This swath of LB is approximately 1400' long and ranges in depth from 270' to more than 300'. It encompasses outlying commercial properties such as the 200 Great Road building where the Prince Street Café and other businesses are located, the Blue Ribbon business strip and the Sunoco Station. It has an area a little in excess of 9 acres, 2/3 of which is the piece lying within Bedford Marketplace, and which is the subject of the current rezoning petition.

The 6-plus acre portion of the Bedford Marketplace that is proposed for rezoning encompasses parts of four separate parcels, but they are held in common ownership and control, so the lotting does not appear to be germane to the warrant article. The swath of LB that would be rezoned to GB encompasses the two new buildings, designated as B (the one that is nearing completion) and C (not yet built but slated for construction start after B is finished).

Summary of Public Hearing before Planning Board, October 27, 2015

(NOTE: this is a summary of the public hearing proceedings of October 27, 2015 but not the official minutes thereof; those will be drafted, reviewed, approved by the Planning Board and saved and posted for the record as time permits in the near future.)

Chair Amy Lloyd opened the public hearing at 7:30 pm. Attorney Pamela Brown spoke for the Bedford Marketplace owner/petitioner, explaining that the 2000 square foot limit on retail sales area is too low in today's market, and probably always was too small a ceiling on space, even for many small businesses. She further updated the attendees in regard to the tenants signed up for the nearly completed Building B, as well as several tenants already signing onto the pending Building C. Planning Director Glenn Garber summarized the Board's prior public deliberations and identification of zoning issues.

Public testimony: Mr. Alan Chertok expressed concerns that new Building B at the Bedford marketplace was out of scale for the area. Ms. Sharon McLatchey expressed opposition to article, with concerns that Bedford was growing too much and that the character of the community was changing. Ms. Carol Amick of the ZBA, speaking as an individual, wondered why the article was introduced in the first place. Atty. Brown said the real trigger was the unreasonable 2000 SF limit on retail floor space. Ms. Amick asked for examples of stores that were always in excess of 2000 SF but still not large stores. Ms. Brown replied with examples like the Paper Store and Yankee Candle falling in the 10-15,000 SF range. Ms. Ellen Michaud asked if this meeting (ed. *Hearing*) was to decide whether or not to place the article on the warrant, and Chair Lloyd and other Board members replied that it was not (that had been decided by Selectmen) and that the Planning Board was holding its public hearing required for any zoning article. Ms. Michaud also stated that the expansion of the shopping center was only about money, not the good of the town.

Ms. Cindy Barbahan expressed concerns about displaced tenants, traffic and the possible growing size of stores. Mr. Richard Axtel said that the Marketplace expansion was too much change for Bedford and that he didn't like the increasing commercialization of the town. Mr. Jeff Dearing of the ZBA, but speaking as an individual, wondered if the 2000 SF limit could simply be increased, but Ms. Lloyd, Mr. Garber and others explained the across-the-board impact on all LB districts in doing so. Mr. David Powell from the FinCom, but speaking as an individual, expressed the thought that there were really only 3 un-let spaces in Building C and that only those were at stake, but then later conceded that over time, that occupancy could shift to fewer, larger users. Mr. William Moonan said that he was concerned about users getting too large, and that

sending cases over 2000 SF to the ZBA for a variance was an adequate way to handle the situation. He didn't want the shopping center to become too intense a development. Selectman Mark Siegenthaler said that the Planning Board's review should have put consideration of this article in the context of relevant portions of the Comprehensive Plan.

Planning Board deliberations: Ms. Lisa Mustapich conceded that interior fit out could eventually allow a larger user, but the severity of the 2000 SF limit outweighed that in considering the present article. Mr. Jeffrey Cohen said that this was a hard decision, but in the end, the 2000 SF ceiling was excessively low and not encouraging to good business development. Ms. Sandra Hackman expressed the thought that change and new development modes were hard for people to accept initially, and acceptance needed to happen gradually over time. Ms. Lloyd and Mr. Garber added that given likely per-foot rents for new space the Marketplace would not be a location where very small, independent businesses would be able to afford to rent space. Ms. Hackman further said that the Marketplace redevelopment was a step toward making Bedford a more walkable environment, with central, compact development patterns and attractive destinations. Ms. Amy Lloyd agreed with Ms. Hackman's thoughts and added that the Marketplace and other projects, while in their unfinished state, were not attractive places, and that the finished projects needed to mature to be seen in their best light. Ms. Lloyd further pointed out that the uses that have been located in the two old, small-store buildings were not especially dynamic ones: fast food, banks, salons, etc. and that strong retail uses would support property values.

The Board then voted as documented in the first section of this Report; see vote and Findings therein.

Analysis of Community & Zoning Issues from the Warrant Article

(Note: this Analysis section to follow reflects the Planning Board's public deliberations, supported by the Planning staff's technical analyses, of the proposed article, as discussed at the October 13 deliberations on this matter and at the October 27 public hearing.)

Planning's consideration of the article started by analyzing the zoning bylaw in regard to the specific differences between LB and GB zoning, including allowed, conditionally permitted and prohibited land uses, and their regulatory track, meaning as-of-right, as-of-right with site plan review, or full special permit from Planning Board or ZBA. It was determined that there are very few differences between LB and GB. The one significant difference is that GB allows Supermarkets, General Department Stores, furniture stores and similar businesses to be established as-of-right. In most instances, these uses would have a larger footprint than other enterprises requiring much less space. There has been, of course, a supermarket at Bedford Marketplace for years with Whole Foods at 44,000 SF, which used to be Bread and Circus, and Purity Supreme before that, albeit in the GB portion of the site. It is interesting to note, however, that Purity used to occupy the entire front building where the liquor store, Post Office and Breugger's were situated.

The Board then investigated the implications of various recommendations to town meeting.

A recommendation to disapprove the rezoning from LB to GB was an option, but this vote will assure that potential business tenants at the Marketplace who seek more than 2000 SF sales area will have to petition the ZBA for hardship relief. Hardship in MA zoning law is defined as circumstances that make relief reasonable due to unavoidable factors of soils, shape and topography. An approach that compels a

hardship standard in each such instance contradicts the basic purpose of useful zoning, and lengthens the process of securing tenant occupancy for little apparent public benefit.

It is also technically an option to table the matter for STM 15, for study and possible action in a future year, but this deferring of the issue then becomes a major project that some party of standing has to take on, if the intended scope involves efforts such as an overall ceiling on the size of any store (retail store size caps), a new "mid-size" business district, a new Great Road commercial overlay district geared to today's market needs, or even a re-examination of floor-area-ratios in business districts as a step in the right direction. All of these options are major undertakings, however, and are beyond the scope of the present warrant article.

This brings the analysis to the petitioner's actual warrant article, which is a map amendment to change LB to GB at the Bedford Marketplace. Some might feel that this is an approach with at least some degree of risk for the community, in the sense that hypothetically, the owner, in a year, or two, or ten, could tear down the new buildings B and C (the new structures close to the street) and attempt to bring in a big box department store. However, it is important to note two constraints to this scenario:

- 1) ...that the previous site plan approvals from 2008, 2014 and 2015 remain intact, so the owner could not do this without coming back to the town for regulatory approval for a new layout and design; and
- 2)... that having just invested a large sum of capital in the new buildings (as well as the Red Heat addition by Marshall's known as Building A), the probability that this scenario will occur seems very low for the foreseeable future, perhaps even the remaining useful economic life of this shopping center. Moreover, in the ensuing years, further zoning amendments that are protective of the community's interests could be investigated, if felt to be necessary. While a worst case scenario is not beyond the realm of possibility, the risk would seem to be low and the present article would seem to be the most reasonable way to deal with the present dilemma.

Others have raised the hypothetical scenario of the owners evicting tenants from the new buildings B and (the pending) C and using one or both new structures for a single large business occupant. However, the following factors should be kept in mind. Building B has a footprint of approximately 23,000 square feet and Building C about 26,000 SF. The Whole Foods and Marshall's already located in the shopping center fall into the 40 to 45,000 SF range. A Super Walmart or large B.J.'s can be 150,000 SF or greater. CVS locations and retailers like the Paper Store often fall into a 9,000 to 14,000 SF footprint. Some retail uses might fall into the 20-25,000 SF window, but it is also true that true big box chains (the companies we associate with large free-standing buildings) are highly unlikely to locate in Building B or C at the Marketplace; those structures are far too small. Also see supplementary Data Sheet that was used at the public hearing on October 27, attached to the Report as an Appendix.

Another theoretical possibility that was discussed in both the informal October 13 discussion and the October 27 public hearing was to amend the LB zoning just to raise the bar on the 2000 SF sales area limit, stopping short of changing it to GB. The problem with doing that is that it probably would have to be changed in the same way in all other LB District, where the 2000 SF ceiling might be appropriately protective to the location. Occasionally, zoning laws do contain an exception whereby another quantitative standard can be applied for different properties within the same zoning district, but doing it in this manner is not best zoning practice, and potentially there could be issues of uniform treatment for uses within the same zone, under MGL Chapter 40A, section 4.

Finally, it should be noted that the GB district has a building height limit of 37' while LB has a maximum height of 25'. However, the LB provisions also allow for a height of 37' if front setbacks are increased from 10' to 35', so there is already a possibility in the LB District for buildings that exceed 25' in height.



* The main difference in the Dimensional Table between LB and GB is the height-and-setback option for LB, whereby buildings can be higher with increased setback...

Signed this 29 day of October, 2015, for the Bedford Planning Board:

Glenn H. Garber, AICP
Planning Director

Appendix follows on next page.

APPENDIX: SUPPLEMENTARY DATA FOR BEDFORD MARKETPLACE ZONING ARTICLE

Building Footprint Sizes: Suburban Retail:

- Free-standing Restaurants—1000 to 8,000 SF (tending toward smaller today)
- Pharmacy chain stores—11 to 15,000 (avg. 13,000 SF)
- Bookstore franchise—21 to 25,000 SF
- Electronics chains—37,000 SF (tending toward slightly smaller today)
- Retail Department Stores—60,000 SF (avg.)
- Home Improvement Retailers (w/garden shop)—128,000 SF
- Super-sized Dept. Stores—99,000 SF to 250,000 SF

(From various commercial real estate, planning and business web pages)

Retail Cap Examples:

- Tolland, Conn. 52,000 square-foot limit on size of retail businesses.
- Wilton, Conn. 30,000 square-foot limit on size of retail businesses.
- Clermont, Fla. 100,000 square-foot limit on size of retail businesses.
- Peachtree City, Ga. 32,000 square-foot limit on size of commercial businesses.
- Easton, Md. 65,000 square-foot limit on size of retail stores; ordinance also bars variances allowing larger stores.
- Gaithersburg, Md. 25,000-80,000 square-foot limit on size of commercial buildings within Washingtonian Center.
- Rockville, Md. 65,000 square-foot limit on size of retail stores; 25,000 and over must comply with design guidelines.
- Boxborough, Mass. 25,000 square-foot limit on size of retail stores.
- Westford, Mass. 60,000 square-foot limit on gross floor area of retail stores.
- Walpole, N.H. 40,000 square-foot limit on retail stores and restaurants.
- Stratham, N.H. 80,000 square-foot limit on retail stores, light industrial uses, and offices.
- Taos, N.M. 30,000 square-foot limit on size of retail businesses; 80,000 square feet allowed with variance.
- East Hampton, N.Y. 25,000 square-foot limit on gross floor area of supermarkets; 15,000 square-foot limit on gross floor area of retail stores.
- North Elba, N.Y. 40,000 square-foot limit on retail stores; 68,000 square-foot limit on shopping centers.
- Skaneateles, N.Y. 45,000 square-foot limit on retail stores; 15-acre limit on shopping centers.
- Mount Joy, Pa. 100,000 square-foot limit on size of retail stores located in limited commercial districts.
- Township of Warwick in Lancaster County, Pa. 20,000 square-foot limit on gross floor area of retail stores; stores in excess of 20,000 square feet require special permit.
- Warrenton, Va. 50,000 square-foot limit on gross floor area of retail stores; special permit required for larger stores.
- Mequon, Wis. 20,000 square-foot limit on size of retail stores.

FROM NATIONAL TRUST FOR HISTORIC PRESERVATION, MAIN STREET AMERICA PROGRAM:

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