



Town of Lexington
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Robert Creech, Chair
 Robert D. Peters, Vice Chair
 Ginna Johnson, Clerk
 Richard L. Canale
 Charles Hornig
 Michael Leon, Associate

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

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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 [redacted] in favor, [redacted] in opposition, and [redacted] in abstention for Article **12: Financial Services**.

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Deleted: 14: Wireless Communications

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.

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In 2019, the Building Department received an application **to locate several ATMs in a Lexington center storefront that would be connected remotely to a bank employee. No bank employees would be physically located in the storefront location.** 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.

Deleted: for a storefront of containing several ATMs connected to a remote bank employee.

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Deleted: Because ATMs are an accessory use to a bank or another business,

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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.**

62 Also, this zoning amendment contemplates delivery of banking services to persons in a car
63 by adding the use “Banking services delivered to persons in a car” to Table-1, Permitted
64 Uses and Development Standards. The purpose of this addition is to prevent curb conflict,
65 which may encourage double parking and impair safety on Lexington streets. This is
66 intended to be a forward-looking bylaw, which addresses potential issues with the evolving
67 delivery industry.

Deleted: An accessory use as defined under Lexington Zoning Bylaws Section 3.2.1: ¶
“Any use or structure not listed as an accessory use in Table 1 is permitted as an accessory use provided it is a use or structure that is customary and incidental to a principal use or structure permitted by Table 1, conforms to all other provisions of this bylaw, and complies with all other Town bylaws or General Laws.”¶

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68 **PUBLIC HEARING PROCESS**

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

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

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

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83 **JANUARY 22, 2020**

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

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

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

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

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

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

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

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117 **Charles Hornig moved that the Planning Board vote make a favorable**
118 **recommendation to the Annual Town Meeting on the Financial Services Article.**
119 Richard Canale stated that he would like to think about the language before voting.
120 The motion was not seconded. MOTION FAILED
121 Mr. Creech requested a straw poll to determine the will of the Planning Board. Members of
122 the Planning Board support the article with a few minor edits.

123 FEBRUARY 12, 2020

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

125 MARCH 5, 2020

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

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

133 **Fall Special Town Meeting Public Hearing Proceedings (September 2020)**

134 On Wednesday, September 9, 2020, after the publication of the legal advertisement in
135 the Minuteman Newspaper on August 20, 2020, and August 27, 2020, and notification
136 sent to parties of interest, the Planning Board opened its public hearing for Article 12:
137 Financial Services. A continued public hearing was held on Wednesday, September 23,
138 2020. At such time the Planning Board closed the public hearing and made a favorable
139 recommendation to the 2020 Special Town Meeting-2.

140 SEPTEMBER 9, 2020

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

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

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

148 SEPTEMBER 23, 2020

149 **INSERT**

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

152 **ARTICLE MOTION & PROPOSED LANGUAGE**

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Deleted: 14: Amend the Zoning Bylaw – Wireless Communications

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159 That the Zoning Bylaw, Chapter 135 of the Code of the Town of Lexington, the Zoning
160 Bylaw, be amended as follows (~~struck through text is to be removed and underlined text~~
161 ~~is to be added~~), and further that non-substantive changes to the numbering of this bylaw
162 be permitted in order that it be in compliance with the numbering format of the Code of
163 the Town of Lexington: (cross-outs are eliminations and **bold underline** is new
164 language):

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

166 3.1.6 ~~Banks and Credit Unions and Real Estate Sales or Rentals~~ Services in ~~CB~~
167 ~~District Center~~ Storefronts.

168 1. Purpose. Lexington Center is a place in which shops, workplaces, schools,
169 historic attractions, housing, open space, and civic facilities intimately co-exist to
170 create an active retail and cultural destination with an identifiable sense of place.
171 It is in the public interest that the Town protect and enhance the vibrancy of the
172 Central Business District by creating a supportive environment for a diverse
173 group of uses throughout the Center, and regulating the use of the limited first
174 floor storefront area and frontage of the Central Business District is necessary to
175 achieve this goal.

176 2. Special Permit Review Criteria. In addition to the criteria detailed in § 135-9.4.2,
177 as a precondition to allowing the establishment, relocation, or expansion of a
178 ~~banking or credit union banking~~ or real estate service use (Line H.1.05 and Line
179 H.1.04 respectively in the Table of Uses) in a center storefront ~~the Central~~
180 ~~Business District~~, the SPGA must also find that the applicant has satisfied the
181 specific criteria listed below:

- 182 a. The granting of the special permit will advance the goals expressed in
183 § 3.1.6.1 above;
- 184 b. The proposed use in the proposed location is in the public interest;
- 185 c. The proposed use will not create an undue concentration of these uses in
186 the immediate area;
- 187 d. The proposed use will maintain hours and days of operation and an active
188 storefront consistent with other retail uses in the Central Business
189 District;
- 190 e. The proposed length of the storefront will not exceed the average length
191 of other center storefronts ~~in the Central Business District~~;
- 192 f. The proposed first floor square footage will not exceed the average size of
193 other center storefronts ~~in the Central Business District~~; and
- 194 g. As part of providing a visually engaging storefront, the interior area of the
195 property adjacent to the storefront must be a space dedicated for patrons
196 and shall not be used for office, cubicle, conference, or storage areas.

197 3. The SPGA may waive strict compliance with criteria 2e and 2f above, where such
 198 action is in the public interest and consistent with the intent and purpose of this
 199 bylaw.

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

201 BANKING SERVICES

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

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

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

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207 D. Delete rows H.1.06 and H.1.07 of Table 1, Permitted Uses and Development
 208 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

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210 E. Add a new row H.2.03 to Table 1, Permitted Uses and Development Standards, as
 211 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

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213
214 **Planning Board Vote**
215 **█ moved that the Planning Board recommend favorable action for Article 12: Amend**
216 **Zoning Bylaw – Financial Services, as presented. █ seconded the motion. The**
217 **Planning Board voted in favor of the motion ____.** **MOTION PASSED**

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- 218
219 Robert Creech
220 Robert Peters.....
221 Ginna Johnson.....
222 Richard Canale.....
223 Charles Hornig.....

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225 **Record of Vote**

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

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

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234
235 **Signature of the Planning Board**

236 Signatures of a majority of the Planning Board,

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238 _____

239 Robert Creech, Chair

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