

# Resident's Guide: What the Proposal Doesn't Say

A Citizen's Interpretive Guide to 2018 ATM Article 38 (commercial zoning proposal for Marrett Road near Spring Street)

*What the proposal **doesn't** say may be more important than what it does say*

## EXECUTIVE SUMMARY

The proposal for a new commercial zone on Marrett Road near Spring Street, in the form of an Owner's Citizen Petition to Town Meeting (2018 ATM Article 38<sup>1</sup>), provides inadequate information for a resident to make an informed decision. This proposal says very little in textual format and is primarily a brief Article, a set of tables making new zoning rules and a brief bulleted summary of those tables. It's not a proposal that a citizen can readily understand. It's devoid of any background, explanation, discussion or supporting data or information. It's even missing rudimentary key information such as definitions of symbols and acronyms. Even with an understanding of the bullets and tables, the proposal raises more questions than it answers.

Therefore, we herein deconstruct the plan for our fellow Lexingtonians. We interpret what the proposal says in its textual statements as well as what it doesn't say in text but rather buries deep within its tables. We also identify some of the components that are critical for a zoning proposal of this scope and magnitude and that are entirely missing from this proposal. Once a citizen reviews this brief interpretative guide s/he should be better equipped to make a decision on the proposal.

Please note that we are residents and not planning professionals; please see *Disclaimer* at the end of this document. It should be further noted that the proposal should *not require* interpretation by professionals. It should be written and presented in such a manner that the general public can understand it. The fact that the proposal requires this level of decoding to be understandable to residents is a reflection of the complete lack of planning that went into the proposal.

One take home message from the analysis presented in this *Guide* is that the proposal doesn't say it explicitly, but it rather shows implicitly that it is a classic *spot zoning*<sup>2</sup> proposal in that it adds new uses, not currently allowed in the district, to create a new commercial zone designed specifically by and for a single property owner, with no demonstrated benefit to the community and with unknown potential costs and risks to Lexington. Such spot zoning is in

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<sup>1</sup> As of the date of this writing, the version of 2018 ATM Article 38 that was available publically online on the Planning Board website ([lexingtonma.gov/planning-board](http://lexingtonma.gov/planning-board)) was dated January 31, 2018.

<sup>2</sup> A "classic" definition of spot zoning is "the process of singling out a small parcel [or several parcels] of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners." See, for example, [plannersweb.com/2013/11/understanding-spot-zoning-2/](http://plannersweb.com/2013/11/understanding-spot-zoning-2/).

direct contravention to Lexington's Comprehensive Plan<sup>3</sup> as well as best practices in planning.<sup>4</sup> Spot zoning, such as that represented by this proposal, is antithetical to planning for a sustainable future of economic development and sets a dangerous precedent for commercial zoning Town-wide for the future.

Perhaps an even more unsettling take home message is that hidden deep within the tables of this proposal is a most extraordinary attempt to undermine the very basis of neighborhood commercial zoning regulation in Lexington. This proposal would have Town Meeting amend the Zoning Bylaw to cede its authority to approve changes to dimensional controls (e.g., lot and building measurements; distances from street and property lines) for the new commercial zone. It would allow this owner to create a new category of neighborhood commercial zone in which he could set his own building heights, building footprints (areas on lot) and distances from the street and to property lines, almost without limit, simply by seeking a special permit waiver. No longer would Town Meeting, our representative legislative body in Lexington, make those decisions. No longer would Town Meeting be able to ensure that our neighborhood commercial zone isn't scaled up to bring an urbanized commercial center that is completely out of character with our residential neighborhood. No other category of *neighborhood* commercial zoning district in Lexington has this ability to create its own dimensional controls via special permit waiver rather than a Bylaw change.<sup>5</sup>

But it won't stop at Marrett Road and Spring Street. Once this new category of commercial zone is established in the Bylaw, it becomes available throughout Lexington. Other neighborhood commercial districts will demand equal treatment and re-zoning to this new category of no-holds-barred district. Alternatively, they'll demand that they similarly be able to wrest control of dimensional controls away from Town Meeting. Other neighborhood commercial districts beyond the Marrett and Spring district could also become urbanized centers in the midst of surrounding residential neighborhoods.

Thus, these aspects of the proposal set dangerous precedents for Lexington in creating a slippery slope toward removing Town Meeting as the final arbiter of zoning decisions in neighborhood commercial zones. Consequently, since Town Meeting is Lexington's representative legislative body, eliminating Town Meeting's voice will result in minimizing citizens' voices in commercial zoning decisions that affect them.

What follows is a brief, step-by-step analysis<sup>6</sup> of *what the proposal says and what it doesn't say*. So, fellow Lexingtonians, grab a cup of coffee along with a copy of the owner's proposal<sup>1</sup> and this *Guide* and then you can decide for yourself!

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<sup>3</sup> See Planning Board website at [lexingtonma.gov/planning-office/pages/comprehensive-plan](http://lexingtonma.gov/planning-office/pages/comprehensive-plan)

<sup>4</sup> See, for example, Godschalk, D. and Rouse, D., *Sustaining Places: Best Practices for Comprehensive Plans (PAS 578)*, American Planning Association, 2015, [planning.org/publications/report/9026901/](http://planning.org/publications/report/9026901/)

<sup>5</sup> The large manufacturing district on Hartwell Avenue and large office parks sited along the major highways at the Town's periphery (i.e., Routes 2 and 128) may seek special permit waivers to change certain dimensional controls. But, those commercial zones are, appropriately, limited to the Town's periphery and, unlike this proposed new zone, are not neighborhood commercial zones embedded within residential neighborhoods.

<sup>6</sup> The analysis consists of (a) *Table 1*, a comparison by subject of what the proposal says and what it doesn't say; (b) *Table 2*, a guide to the unsourced tables presented in the proposal; (c) *Table 3*, a guide to symbols not defined or sourced in the proposal and (d) *Table 4*, version history.

**TABLE 1. WHAT THE PROPOSAL SAYS...AND WHAT IT DOESN'T SAY**

No.	What the proposal says...	What the proposal doesn't say...
1	"A new zoning district will better meet the needs of the surrounding neighborhood"	<ul style="list-style-type: none"> <li>• What are those "needs"? How did the owner decide the neighborhood has such needs? <u>The proposal doesn't say.</u></li> <li>• Shouldn't we residents decide what we need? Why should this one property owner make that decision for the rest of us? <u>The proposal doesn't say.</u></li> </ul>
2	The proposal will result in "a new district...allowing increased density"	<ul style="list-style-type: none"> <li>• What is "increased density" in this proposal? What the proposal shows in the accompanying tables, but <u>doesn't say explicitly</u>, is that increased density means, in this case, taller buildings, with larger footprints (area on the lot) and buildings and parking lots closer to property lines, including <i>residential property lines</i>.</li> <li>• Moreover, what <u>the proposal also doesn't say</u> about increased density but that is buried in the tables is that building heights, footprints and distances from the street and property lines can ultimately be virtually anything the owner wants with the only requirement being the obtaining of a special permit waiver. A resident would have difficulty finding this because it's obscured in the "Schedule of Dimensional Controls" table by the acronym "NR" and the reference to a footnote "f". But try to find out in the proposal what the acronym and footnote references mean. You won't find it because <u>the proposal doesn't say</u>. Instead, you can only find their meanings in the Town's zoning by-laws.<sup>a</sup> So, we provide you ready access to the meanings of these symbols in Table 3 of this <i>Guide</i>.</li> <li>• The proposal also shows in the tables, but <u>doesn't say explicitly</u>, that the current buildings are non-conforming (i.e., they do not follow the current zoning rules) because they are closer to property lines than allowed by the current rules. <u>What the proposal also doesn't say</u> is that it will change the rules to make the existing non-conformities permanently allowed. Thus, the owner can have his own commercial zoning rules and not have to abide by the rest of Lexington's commercial zoning rules! This sets a dangerous precedent for the Town, for surely other commercial property owners with existing non-conforming structures will demand their own zoning rules, too.</li> <li>• <u>The proposal also doesn't say</u> how increased density might negatively affect the neighborhood and Town. Increasing density often runs the risk of increasing traffic congestion and decreased pedestrian safety, which would be a detriment to the neighborhood and Town. Yet the proposal is silent on this very important matter. There are ways in which potential increases in traffic congestion and noise might be mitigated, but similarly, the proposal is silent on that matter, too.</li> </ul>

3	<p>“A new zoning district will...unify these small commercial districts” and “equalize uses on opposite sides of Marrett Road”</p>	<ul style="list-style-type: none"> <li>• When and where has Lexington said it wants such “unification”? What professional group recommends such “unification” as a best practice in commercial planning and zoning? What is the planning logic of and reasoning behind such “unification”? <u>The proposal doesn't say.</u></li> <li>• There is no <i>a priori</i> reason that commercial zones across the street from one another need to be “unified”. There are many other cases in Lexington of different commercial zones across the street from one another. There are even many cases of two different commercial zones <i>directly abutting one another</i>. Why is such purposeful, well-considered and forward-thinking zoning a problem? <u>The proposal doesn't say.</u></li> <li>• Using the owner’s theory of the need or desirability of commercial zoning “unification”, the nearby intersection of Marrett Road and Lincoln Street, at which only one of the 3 zones currently allows for a gas station, should be “unified” such that we could have 3 gas stations there. Similarly under the owner’s theory, the zones in the nearby intersection of Marrett Road and Waltham Street should be “unified” to allow for 4 gas stations, one on each corner, instead of the 2 there now. The proposal defies planning logic and is a poorly conceived, formulaic and catch-all approach to commercial zoning that denies the specific needs of and conditions in residential neighborhoods and the Town as a whole.</li> </ul>
4	<p>The proposal will result in “a new district reflecting modern commercial zoning practices”</p>	<ul style="list-style-type: none"> <li>• What exactly are said “modern commercial zoning practices”? <u>The proposal doesn't say.</u> It doesn't define the term, much less explain where it comes from. Try Googling it. You won't find it anywhere else.</li> <li>• What will result from following these mysterious “modern commercial zoning practices”? <u>The proposal doesn't say.</u></li> <li>• In fact, this proposal is actually the <i>direct opposite</i> of “modern”. The proposal is in <i>direct contravention to current best practices</i> in planning and zoning, which were incorporated into the Town’s Comprehensive Plan and future planning processes. The proposal is, in fact, a <i>spot-zoning proposal</i><sup>2</sup>, the kind of proposal that led to zoning mistakes in the past and undermines the purpose of the comprehensive planning process to avoid just such mistakes in the future.</li> </ul>
5	<p>The new zone will have 11 “new uses” and 63 “matching uses” or “use changes”</p>	<ul style="list-style-type: none"> <li>• <u>The proposal doesn't explicitly say</u>, but the tables show that the parcels in the existing CN (north Commercial Neighborhood Business) zone will have <u>70 new uses</u><sup>b</sup> that are not allowed currently. The fact that these uses are allowed in the CS (south Commercial Service Business) zone across the street does not erase the fact that they will be <u>new uses</u> for the parcels in the current CN zone. A <u>new use of a parcel is a new use</u>. Simply labeling them as “matching uses” or “use changes”, terms that do not exist in Lexington’s Zoning Bylaw, does not conceal the fact that these are new uses.</li> <li>• Similarly, the tables show the parcels in the current CS zone will have <u>28 new uses</u> added.</li> <li>• Among these new uses are 15 new uses that are not currently</li> </ul>

		<p>allowed in <u>either</u> CN or CS zone, such as restaurant/bar, liquor store, bank, medical clinic and department store.</p> <ul style="list-style-type: none"> <li>• There is a danger of a seriously flawed precedent being set by the implicit premise that allowed uses in the merging of two (or more) zones should automatically make allowable for the future <i>any</i> of the uses currently allowed for <i>any</i> of the parcels in the existing zones. This is a new zone. There's no <i>a priori</i> reason that all past uses in both the old zones must be automatically grandfathered as allowable into the new zone. The proposal basically posits that if a use is allowed now in a zone across the street, then it should be allowed in a newly created zone that encompasses those parcels, regardless of current conditions. This aspect of the proposal, looking to the past as a basis to set standards for today and the future, is yet another example of this proposal being the <i>direct opposite</i> of "modern".</li> <li>• Moreover, the proposal doesn't explicitly say, but the tables show that <u>this is a spot-zoning<sup>2</sup> proposal</u> in direct contravention to Lexington's Comprehensive Plan and planning best practices. The addition of 15 new uses that are not allowed now in either of these zones demonstrates that this proposal goes far beyond "equalizing uses" between the two zones. Instead, it is a classic spot-zoning proposal in that this is a new zone in the Town with new uses created by and for the owner, with no demonstrated community benefit and with potentially high risks and costs to the neighborhood and Town. This type of spot-zoning is not a way to ensure sustainable economic development in Lexington. Moreover, it sets a dangerous precedent for Lexington in which other commercial property owners will demand their own unique, personally-tailored commercial zones.</li> </ul>
6	<p>"7 of the Uses have been Reduced on both CN and CS sides of Marrett Road"</p>	<ul style="list-style-type: none"> <li>• <u>The proposal doesn't explicitly say</u>, but the tables show that a number of principal residential uses currently allowed in the CN zone will no longer be allowed in the new combined zone. Yet, this elimination of residential uses in a neighborhood commercial zone makes the zone less residential and more commercial. Why is the possibility of mixed-use development, which is a way in which to bring affordable housing to Lexington, being precluded in the new zone? <u>The proposal doesn't say.</u></li> <li>• Once again, this proposal is <i>just the opposite</i> of "modern" in its foreclosing on a possible future commercial zone more integrated with the residential neighborhood and more welcoming of those seeking affordable housing.</li> </ul>
7	<p>The new zone will have "4 new development standards"</p>	<ul style="list-style-type: none"> <li>• It should be noted that the counting of these "4 new development standards" is confusing because it makes it sound like they are not new uses and that there are 11, rather than the actual 15, new uses not currently allowed in either zone. As noted in Section 5 above, a "new development standard" is a "new use".<sup>b</sup></li> </ul>

8	<p>Tables in the proposal show that minimum lot area will be reduced from 20,000 s.f. (CS) and 15,500 s.f. (CN) to 5,000 s.f. in the new merged zone</p>	<ul style="list-style-type: none"> <li>• <b><u>The proposal doesn't say</u> why the existing parcels should be allowed to be subdivided into small 5,000 s.f. parcels. Currently, only downtown Lexington's commercial zone is permitted to have such small lots and there're only a few of them. What uses might fit on a small 5,000 s.f. parcel in this new neighborhood commercial zone? How would this work? What would it look like? What might it mean for the neighborhood and Town? <u>The proposal doesn't say.</u></b></li> <li>• <b>What isn't explained but some digging reveals is that 3 of the parcels in the CS zone are non-conforming for lot size in that they are less than the required 20,000 s.f. The smallest parcel is 5,032 s.f. and 2 other parcels (one of which does not belong to this owner) are non-conforming on lot size. So, it appears this change to dimensional controls for minimum lot area is to codify (i.e., make permanent in the Bylaw) the existing non-conformities.</b></li> <li>• <b>The problem is, it also allows the owner to seek to subdivide at least 3 of the other parcels in the 2 zones. This may work in downtown Lexington where there's on-street parking and a municipal parking lot. However, that's not available in this commercial district. So, the result could be a more small parcels like 439 Marrett Road (5,032 s.f.). One negative outcome of this could be a higher number of parking lots with their own ingresses and egresses that would compound the issue of traffic congestion on Marrett Road. More ingresses and egresses would reduce pedestrian safety as well. <u>The proposal doesn't say</u> anything about these risks nor how these or other possible negative effects would be mitigated.</b></li> </ul>
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<sup>a</sup> Access the zoning bylaws on the Planning Board website ([lexingtonma.gov/planning-board](http://lexingtonma.gov/planning-board)), which includes a direct link to the official *Schedule of Dimensional Controls*. See Table 3 in this *Guide* for definitions of these symbols.

<sup>b</sup> Note that a "Development Standard" is a "Use" by definition in the Lexington Zoning Bylaw, Chapter 135, Section 3.4, Table 1 Permitted Uses and Development Standards.

**TABLE 2. BRIEF GUIDE TO THE MEANING OF THE TABLES IN THE PROPOSAL**

Table Order	Slide No.	Table Title	Table to be Amended in Zoning Bylaw <sup>a</sup>	Zoning Bylaw section to be amended <sup>a</sup>	Description
1	8	Not labelled	Permitted Uses and Development Standards	3.4	Zoning Bylaw Table 1
2	14	Not labelled	None	None	Owner’s representation of summary of Permitted Uses and Development Standards
3	15	Table 2, Schedule of Dimensional Controls	Table 2, Schedule of Dimensional Controls	4.4	Zoning Bylaw Table 2
4	15	Minimum Yards for Parking	Minimum Yards for Parking	5.1.11	Unnumbered table within Bylaw section
5	15	Required Depth or Width (in feet) of Transition Area	Required Depth or Width (in feet) of Transition Area	5.3.5	Table that constitutes complete Bylaw section

<sup>a</sup> ***The proposal doesn’t say*** which sections of the Zoning Bylaw are to be amended by the Article. The section numbers and table names provided are the authors’ interpretation of the proposal’s intent.

**TABLE 3. GUIDE TO SYMBOLS AND ACRONYMS NOT DEFINED OR SOURCED IN THE PROPOSAL**

<b>Symbol/ Acronym</b>	<b>Meaning</b>	<b>Description</b>	<b>Bylaw Citation</b>
<b>(f)</b>	“This limit may be waived by special permit.”	Footnoted dimensional controls may be changed with the approval of the SPGA <sup>a</sup>	Section 4.4, Table 2
<b>FAR</b>	Floor area ratio, nonresidential	The ratio of the sum of the net floor area of all buildings on a lot to the developable site area of the lot.	Section 135-10.0
<b>NR</b>	No requirements		Section 4.4, Table 2
<b>SP</b>	Special Permit	Allows for certain exceptions to zoning requirements that would not otherwise be permitted by the Zoning Bylaw; requires approval of the SPGA <sup>a</sup>	Section 9.4

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<sup>a</sup> Special Permit Granting Authority – The SPGA is usually the Planning Board or Zoning Board of Appeals.

***DISCLAIMER***

This *Guide* was written by residents and for residents. It was not written by planning professionals. At the time of this writing, the Planning Board had not yet issued its report or recommendation on the proposal and the public hearing had been continued. When and if that report is issued, we will revisit the analysis herein and make any necessary changes in response. Also, please note that this *Guide* may be updated from time-to-time as we obtain new information, so please check the website periodically for the most up-to-date version. Please also see Version History in Table 4 in the Appendix to this document for a record of updates.

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**Ver. 1.2**

**February 19, 2018**

# APPENDIX

**TABLE 4. VERSION HISTORY**

<b>Version</b>	<b>Date</b>	<b>Description</b>
<b>1.0</b>	2/14/18	<ul style="list-style-type: none"> <li>• First publication of document</li> </ul>
<b>1.1</b>	2/17/18	<ul style="list-style-type: none"> <li>• Added Appendix with new Table 4, Version History.</li> <li>• Revised footnote 6 to note new Table 4.</li> <li>• Changed footnoting schema in Table 1 to match schema for other Tables.</li> <li>• Added numbering scheme to Table 1 for ease of reference.</li> <li>• Added text to Table 1, Section 2 to indicate that Table 3 contains definitions of symbols</li> <li>• Added text to Table 1, Section 5 explaining new uses that are not currently allowed in either CN or CS zone; corrected other text re: spot zoning to replace “new uses never allowed” to “new uses not allowed now”</li> <li>• Added a footnote to Table 1, Section 5 to clarify that a “Development Standard” is, by definition, a “Use”.</li> <li>• Revised Table 1, Section 6 to clarify that dwelling units above commercial units are not currently allowed in either zone; primarily one- and two-family homes are allowed in CN</li> <li>• Revised Table 1, Section 7 to clarify that a “Development Standard” is, by definition, a “Use”.</li> <li>• Other minor clarifications to text</li> </ul>
<b>1.2</b>	2/19/18	<ul style="list-style-type: none"> <li>• Revised Executive Summary to clarify that the proposal includes an Article</li> <li>• Revised Table 1, Section 2 to point out that increased traffic congestion can be accompanied by decreased pedestrian safety</li> <li>• Revised Table 1, Section 8 to incorporate new analysis</li> <li>• Other minor clarifications to text</li> </ul>