

Resident's Guide to Three Versions of the Proposal

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

EXECUTIVE SUMMARY

On February 22, 2018, the Planning (Zoning) Board posted on its website a third version of “detailed information” on 2018 ATM Article 38¹ such that there are now three (3) different proposals posted together on the website. Other than the date order in which they were posted, it's unclear to residents which of these proposals will be the final proposal. Even more confusing is that the final proposal could wind up being none of these three and could instead be *one that Lexington residents have never seen*.

Table 1 in this *Guide* compares the attributes of the three proposals. The Table is our best way at the moment of interpreting the three proposals together², as of the date of this writing and given the short lead time before the Public Hearing, since there is little to no explanation in the three proposals themselves nor has there been a public presentation of the latest proposal. The Public Hearing scheduled for February 28, 2018 at the Planning Board will, it appears, be the first public presentation on this new proposal. Unfortunately, that Public Hearing could also be the last Public Hearing before the Board on any of the proposals. Thus, residents may not have an opportunity to digest and understand the third proposal in time to form a considered opinion and voice that opinion at a Public Hearing. Thus, we are forced to provide this information to residents, for use in preparation for the Hearing, without the benefit of hearing from the owner his intent in posting this new proposal.

Please note that we are residents and not planning professionals; please see *Disclaimer*³. It should be further noted that the proposals should *not require* interpretation by professionals. They should be written and presented in such a manner that the general

¹ The Warrant Article reads as follows: “To see if the Town will vote to amend the Zoning Bylaw and Map to allow additional uses and density in the commercial district along Marrett Road near Spring Street by creating a new zoning district replacing the existing CN and CS districts; or act in any other manner in relation thereto.” As noted in the 2018 Warrant, “The purpose of the Warrant is to inform citizens of the issues to be discussed and does not provide for detailed information about the Articles.” The content of the proposals posted online constitute such “detailed information.” (see Town Meeting website at lexingtonma.gov)

² For a more complete analysis of the second proposal, dated Jan. 31, 2018 see the *Resident's Guide: What the Proposal Doesn't Say*

³ *Disclaimer*: This *Guide* was written by residents and for residents. It was not written by planning professionals. At the time of this writing, there had not been a Public Hearing or other public presentation about the third proposal; the Public Hearing had been continued to Feb. 28, 2018; and

public can understand them. The fact that the proposals require this level of decoding – both as presented herein and elsewhere on this website – to be understandable to residents is a reflection of the complete lack of planning that went into the proposals.

This new proposal seems to reflect the owner's being responsive to his hearing at least some neighbors voice the opinion that they felt dimensional controls in the commercial district should be left as is and should not be changed. This new proposal also reflects a reduction in the scope of new permitted uses compared with previous proposals, limiting added uses to the CS zone. However, the scope of new uses in this third proposal still appears to go far beyond (a) what is represented by the Warrant Article Description and the proposal's summary; (2) the owner's stated business needs⁴; (3) what is allowed in the commercial district now; and (4) the ability of Lexington residents to digest, analyze and come to an informed decision in the short time period allotted.

As one example of this apparent overreach, as shown in Tables 1 and 2, the proposal actually consists of 95 new uses (or variable combinations) that residents need to consider, not 15 new uses as the proposal purports. From a resident's perspective, this is the equivalent of having 95 different proposals rolled into one document. Moreover, as another example of overreach, 60% of new uses proposed are for uses that are *not currently allowed anywhere in the commercial district, that is, in either CN or CS zone*. This goes far beyond goal of district "unification" that, although misguided, is stated as a goal in the Warrant Article Description.

None of the proposals address potential risks and costs to the neighborhoods, the Town and its taxpayers, such as increased traffic congestion and decreased pedestrian and automobile safety.

All Lexingtonians, regardless of one's position on the particulars of each proposal, should be concerned about the rushed nature of the proposal (see Chart 1 for timeline) and the owner's continued submitting of new proposals shortly before Public Hearings and without explanation, discussion, public presentation or any other systematic public communication or outreach to the community. These actions have the end effect of diminishing residents' voices in commercial zoning decisions that affect us.

the Planning Board had not yet issued its report or recommendation on the proposal. After the Feb. 28, 2018 Public Hearing and/or when and if the Planning Board 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.

⁴ Potential businesses the owner has said on multiple occasions that he'd like to lease to in the CS zone (including at a residents' meeting convened by residents on Feb. 15, 2018), but cannot do so due to permitted uses include for example, dental office, medical office, coffee shop, deli and bakery. Proposal #3 adds these new uses but also adds additional uses he has not claimed as needed, such as medical clinic, department store, liquor store, restaurant/bar and business or professional office. None of these new uses are permitted in the entire commercial district now, including both the CN and CS zones.

SECTION 2

Table 1, Comparison of three proposals posted on the Planning (Zoning) Board website as part of 2018 ATM Article 38 (commercial zoning proposal for Marrett Road near Spring Street)

Topic/Subject	Description	Version number		
		Proposal #1	Proposal #2	Proposal #3
Version of proposal	Number by date order of posting on Board website ⁱ	Proposal #1	Proposal #2	Proposal #3
	Date label of proposal	Jan. 9, 2018	Jan. 31, 2018	Feb. 20, 2018
	Date posted on Planning (Zoning) Board website ⁱⁱ	Jan. 9, 2018	Feb. 1, 2018	Feb. 22, 2018
Community outreach by owner	Public Hearing date	N/A ⁱⁱⁱ	Jan. 31, 2018	Feb. 28, 2018 (<i>scheduled</i>)
	Meeting held by owner	Jan. 30, 2018 ^{iv}	None ^v	None ^v
	Public presentations other than a Public Hearing	None	None	None
	Proposal content/explanation/documentation	Brief bullets and tables ^{vi}	Brief bullets and tables ^{vi}	Tables only ^{vi}
Consistency with Town Meeting Warrant Article	Combines 2 zones (CN & CS) into 1 zone (CG)	Yes	Yes	Unknown ^{vii}
New Permitted Uses ^{viii}	New uses that the owner has represented to residents that he needs for leasing in the CS zone	5 – 6 in CS zone only ^{ix}	5 – 6 in CS zone only ^{ix}	Unknown
	New uses (or variable combinations) as presented in the proposals' tables ^x	>70 new uses in CN; >17 new uses in CS	>70 in CN; >28 in CS	95 new uses in CS ^{xi}
	New uses for CS that are currently allowed in the CN zone across the street	7 out of 17 new uses	11 out of 70 new uses	6 of 15 (40%) of proposed new uses as defined in proposal ^{xii} 37 of 95 (39%) of new uses as defined in Table 2

Topic/Subject	Description	Version number		
	New uses for CN that are currently allowed in the CS zone across the street	54 out of 70 new uses	53 out of 70 new uses	N/A ^{xiii}
	New uses in the commercial district (i.e., new uses for the expanded CS zone that are currently <u>not allowed</u> in either the CN or CS zone)	16 out of 70 new uses	17 out of 70 new uses	9 of 15 (60%) of new uses as defined in proposal ^{xii} 58 of 95 (61%) of new uses as defined in Table 2
Changes to Dimensional Controls	Changes to Zoning Bylaw “Table 2, Schedule of Dimensional Controls”	Changes 10 of 12 dimensional controls ^{xiv} for both CN and CS to allow for taller and larger buildings closer to property lines; to codify (make permanent) existing non-conforming structures and lot areas and frontage; and to allow further relaxation of dimensional controls to be under the control of the SPGA ^{xv} rather than Town Meeting	Changes 10 of 12 dimensional controls ^{xiv} for both CN and CS to allow for taller and larger buildings closer to property lines; to codify (make permanent) existing non-conforming structures and lot areas and frontage; and to allow further relaxation of dimensional controls to be under the control of the SPGA rather than Town Meeting	None
	Changes to Zoning Bylaw table “Minimum Yards for Parking”	Reduces distances from residential district line and street line; removes requirements for screening ^{xvi}	Reduces distances from residential district line and street line; removes requirements for screening ^{xvi}	Possibly removes Required Depth or Width (in Feet) of Transition Area for CLO ^{xvi}
	Changes to Zoning Bylaw table “Required Depth or Width (in feet) of Transition Area	Reduces depths or widths of transition areas with residential	Reduces depths or widths of transition areas with residential	None

Topic/Subject	Description	Version number		
		zones; eliminates transition areas with other commercial zones and with street line	zones; eliminates transition areas with other commercial zones and with street line	

ⁱ Number assigned for purposes of easier reference in using this table only; no numbering was assigned by owner

ⁱⁱ Dates are approximate.

ⁱⁱⁱ The first Public Hearing on Jan. 31, 2018 was held on Proposal #2

^{iv} The owner held a meeting on the evening of Jan. 30, 2018, however, to the best of our knowledge, only abutters and some Town Meeting members were invited to the meeting and there was no public notice of the meeting

^v To the best of our knowledge based on information from at least 14 abutters (500 foot) that we spoke with, no abutters or other neighborhood meeting has been held on either Proposal #2 nor on Proposal #3 by the owner

^{vi} The lack of background information, explanation, discussion, documentation and even definitions of key symbols renders the proposal incomprehensible to many residents

^{vii} 2018 ATM Article 38 dictates that 2 zones (CN and CS) will be combined into a single zone; there's nothing in the Warrant Article about a CSX (or CG or any other designation) zone that includes only CS; it's unclear as of the date of this writing how this new Proposal #3 can fit within the construct of the Article

^{viii} Note that a "Development Standard" and an "Operating Standard" is a "Use" by their application in the Lexington Zoning Bylaw, Chapter 135, Section 3.4, Table 1 Permitted Uses and Development Standards. All symbols in Table 1 are defined as uses, even those under "Development Standards" and "Operating Standards" categories. "Development Standard" and "Operating Standard" are not otherwise defined in the Zoning Bylaw, meaning that we have to rely on the way in which they're employed in Table 1 to understand their meaning. The Zoning Bylaw in its Purpose statement recognizes only two major conditions of a property for the purposes of regulation of zoning, namely, "structures" and "uses". Development Standards and Operating Standards are not separate conditions of property. Development Standards and Operating Standards are names for different uses in the same principal category. They are types of secondary uses or subcategories of use. Development Standards and Operating Standards categories are ways of simplifying and consolidating the table of uses by grouping secondary or subcategory uses together. Development Standards and Operating Standards are not always consolidated in this manner in the table of uses but are sometimes included directly by having multiple listings of Principal Uses. Regardless of whether these different uses are termed "New Uses" or "Variable Combinations" or some other term, the point is that residents need a way in which to cut through the jargon used in Table 1 of the Bylaw (i.e., "Principal Uses", "Development Standards" and Operating Standards") to be able to understand how many and what different actual new uses are being proposed that they need to consider when reviewing the proposal. (also see footnote iv in Table 2).

^{ix} Potential businesses the owner has said he'd like to lease to in the CS zone (including the owner's meeting on Jan. 30, 2018 and at a residents' meeting convened by residents on Feb. 15, 2018), but cannot due to permitted uses include for example, dental office, medical office, coffee shop, deli and bakery. According to the owner, these uses are permitted in the CN (north) zone but not the CS (south) zone

^x The numbers for Proposals #1 and #2 are based on the analysis in the *Resident's Guide: What the Proposal Doesn't Say*; that analysis, in order to not get overly complicated, did not consider the multiplier effect of adding new development standards and operating standards to multiple new uses (hence the ">" signs in this Table); the present analysis of Proposal #3, however, now takes into account that multiplier effect (see Table 2 for complete explanation of the totals for Proposal #3)

^{xi} The representations in Proposal #3 in an untitled table that there are 15 new uses and 5 new development standards is incomplete and confusing; see Table 2 for an explanation of the simple methodology used in the proposal for counting new uses in Proposal #3 and a more complete methodology that takes into account the multiplier effect of “Development Standards” and “Operating Standards” and provides a more complete picture to residents of how many and what different actual new uses are being proposed that they need to consider when reviewing the proposal.

^{xii} The six uses currently allowed in the CN zone are: medical/dental office; real estate sales/rental; grocery; apparel; other retail; food-service (by Special Permit)

^{xiii} Proposal #3 doesn't appear to add new uses to the CN zone

^{xiv} Only the two dimensional controls for public and institutional buildings remain as is

^{xv} Special Permit Granting Authority – The SPGA is usually the Planning Board or Zoning Board of Appeals

^{xvi} The 15 feet for Required Depth or Width (in feet) of Transition Area for CLO is missing from the document entitled “Proposed Motion (revised 02/26/18)” but appears to be present in two other documents.

Table 2, Calculation of the Total Number of New Uses (or Variable Combinations) in the “Third Proposal”ⁱ that Residents Need to Consider

Sect. ⁱⁱ	Principal Use Category	(a) No. of Applicable Subcategories of Development Standards			(b) No. of Applicable Subcategories of Operating Standards	(c) No. of New Principal Uses in Category ⁱⁱⁱ	(d) No. of New Uses after Applying Development Standards	(e) No. of New Uses after Applying Operating Standards	Total New Uses (or Variable Combinations) in Category ^{iv}
		Sect. F ^v	Sect. G, H, I or J ^{vi}	Total (a)					
G	Commercial Office	2	5	7	2	3	21	6	27
H	Personal Business or General Service	2	2	4	2	3	12	6	18
I	Sales or Rental of Goods and Equipment	2	2	4	2	7	28	14	42
J	Eating and Drinking; Transient Accommodations	2	0	2	2	2	4	4	8
TOTALS						15	65	30	95

ⁱ Based on the 4 documents posted on the Planning Board website as of February 27, 2018 representing the “Third Proposal”, namely, those entitled “New Uses (revised 02/20/18)”, “New usage summary (revised 02/20/18)”, Public Hearing Presentation 02/28/18” and “Proposed Motion (revised 02/26/18)”.

ⁱⁱ Section letters, Principal Use Categories, Development Standards and Operating Standards refer to Zoning Bylaw Table 1, Permitted Uses and Development Standards (Sect. 3.4)

ⁱⁱⁱ This column represents the simple methodology used in the “Third Proposal” for calculating New Uses. The methodology does not take into account the multiplying effect of applying Development Standards and Operating Standards; that is, it **doesn’t account** for all variables affecting uses.

^{iv} This column represents a more thorough methodology for calculating New Uses (or Variable Combinations) that takes into account the multiplying effect of applying Development Standards and Operating Standards; that is, it **does account** for all or most variables affecting uses and thus is a better measure of the real number of proposals that residents need to consider when considering the “Third Proposal”. For example, this methodology accounts for New Uses such as businesses allowed to store equipment outdoors overnight vs. those that are not allowed to do so and might be allowed only to store equipment outdoors during operating hours; as another example, this methodology accounts for New Uses such as structures that are allowed to be up to 10,000 square feet of gross floor area vs. those that are allowed to be over 10,000 square feet of gross floor area. Regardless of whether these different uses are termed “New Uses” or “Variable Combinations” or some other term, the point is that residents need a way in which to cut through the jargon used in Table 1 of the Bylaw (i.e., “Principal Uses”, “Development Standards” and Operating Standards”) to be able to understand how many and what different actual new uses are being proposed that they need to consider when reviewing the proposal. (also see footnote viii in Table 1)

^v Section E Operating Standards and Section F Development Standards apply to all principal use categories proposed to be changed, that is, those in Sections G, H, I and J

^{vi} Each of the Sections G, H, and I (not J) have their own sets of Development Standards; thus, Sect. G Principal Uses have Sect. G Development Standards, Section H Principal Uses have Sect. H Development Standards, and Sect. I Principal Uses have Sect. I Development Standards

Chart 1: Timeline of 2018 ATM Article 38 (proposed new commercial zone)

