

**GUIDE TO ZONING ARTICLES IN THE 2011
ANNUAL TOWN MEETING AND SPECIAL TOWN MEETING WARRANT**

Articles 5, 6, 7, 8, 9, 10, 11, 12 and 13 – Annual Town Meeting

Articles 1, 2 and 3 – Special Town Meeting

In accordance with Article 84 of the Annual Town Meeting of 1963, the Planning Board submits the following brief report regarding its zoning amendment articles in the 2011 Annual Town Meeting and Special Town Meeting Warrants. This year there are nine zoning articles in the Annual Town Meeting Warrant; five submitted by the Planning Board and four submitted by Citizens' Petition. In the Special Town Meeting there are two zoning articles submitted by the Planning Board. Additionally, there is a General By-Law petition submitted jointly by the Planning Board and Board of Selectmen.

RE: Annual Town Meeting Article 5: Amend Zoning By-Law – Technical Amendments for New England Business Center, Highland Commercial – 128 and Mixed Use Districts

Consistent with the vision and intent of the 2002 Zoning Amendments regarding the New England Business Center, Highland Commercial-128 and Mixed Use-128, mixed commercial uses and multiple buildings on one lot were permitted and encouraged. The Planning Board has recognized this in recent permitting. Given express language elsewhere in the By-Law, this article would ensure that the intent and vision is clearly stated expressly in the language of these sections. In addition, although the medical laboratory arguably falls within laboratories permitted, the amendment is recommended to clarify this intent.

RE: Annual Town Meeting Article 6: Amend Zoning By-Law – Outdoor Seating

This article would allow the Planning Board to permit on private property, upon minor site plan review, seasonal temporary outdoor seating at restaurants and allow the Board of Selectmen to permit on a public way or other public property, again subject to minor site plan review, seasonal temporary outdoor seating at restaurants. The article imposes conditions upon such uses. Any approval from the Board of Selectmen would, of course, also require a separate license or lease of the public land and compliance, if applicable, with the Board's Alcohol Regulations. There is a companion article amending the General By-Law to allow obstruction of public ways and sidewalks so as to accommodate the outdoor seating authorized by this amendment.

RE: Annual Town Meeting Article 7: Amend Zoning By-Law – Neighborhood Business District

Many owners and realtors are experiencing difficulties in selling and/or leasing properties in this zoning district. This article would allow, not only for properties in the district to be restored to single or two-family uses, but expansion of allowable uses. The proposed additional uses would permit uses of similar or lesser impact than those presently allowed to be permitted either by right or special permit, thereby affording greater flexibility in finding tenants and/or facilitating sales. The article would also mitigate the impact of any uses in the district by regulating any operations conducted outside and mandating screening or indoor storage during non-operating hours.

RE: Annual Town Meeting Article 8: Amend Zoning By-Law – Corrective Zoning Amendments

Over the years Town Meeting has approved numerous inserts and other changes to the Zoning By-Law. Unfortunately, when these changes occurred, not all references were changed or deleted as required. This article would correct inaccurate references and delete sections no longer applicable.

RE: Annual Town Meeting Article 9: Amend Zoning By-Law – Schedule of Use Regulations

At present, the ongoing evolution of the types and varieties of businesses outstrips the defined historical uses designated in the By-Law. As a result, many proposed innovative businesses are unable to locate in Needham even though they are similar in kind and impact to those allowed either by right or by special permit. The article would impart a measure of flexibility into the By-Law by allowing the Planning Board to determine if a use is similar in intent and impact to one already allowed in a particular district either by right or by special permit. If that use is allowed by right, the Planning Board is authorized, upon findings that it constitutes the same general use and is similar in intent and impact to one specifically authorized by the By-Law, to allow it by right; if it is a specially permitted use, the Planning Board, upon making the same findings, may allow it by special permit. Town Counsel has recommended revised language to clarify the articles intent. Said recommended modifications are reflected in a motion to amend attached to this handout for your consideration.

RE: Annual Town Meeting Article 10: Amend Zoning By-Law – Building Height Requirements in the Needham Center Overlay and Chestnut Street Overlay Districts

This article is submitted on the petition of Louis Wolfson et al. The article proposes to amend the Zoning By-Law as it relates to building height and number of stories in both the Needham Center Overlay District and the Lower Chestnut Street Overlay District so as to reduce the allowable maximum building height and number of stories currently permitted by special permit from the Planning Board from four stories and 48 feet to three stories and 37 feet.

The Needham Center Overlay District is currently divided into two sub-districts, A and B, in order to accommodate different height regulations. Current regulations allow increased heights in Sub-District B to 2+1 stories and in Sub-District A to 3+1 stories. The “+1” designation means that the top floor is allowed if contained under a pitched roof or stepped back from the façade. The proposed amendment would be limited to Sub-District A within the Needham Center Overlay District.

Presently, in Sub-District A, which lies along a portion of Great Plain Avenue, the minimum building height is set at two stories and twenty-seven (27) feet and the maximum building height allowed as-of-right is set at two and one-half stories and thirty-five (35) feet. The Planning Board currently has authority to grant a special permit to increase the maximum height and number of stories to three stories and thirty-seven (37) feet, or four stories and forty-eight (48) feet if the fourth story is contained under a pitched roof or recessed from the face of the building. Under the proposed amendment the Planning Board’s authority to grant a special permit to increase maximum building height and number of stories in Sub-District A of the Needham Center Overlay District would be limited to three stories and thirty-seven (37) feet.

Much like Sub-District A of the Needham Center Overlay District, the Lower Chestnut Street Overlay District currently provides for a special permit to increase the maximum building height and number of stories from the as-of-right standard of two and one-half stories and thirty-five (35) feet to three stories and thirty-seven (37) feet or four stories and forty-eight (48) feet, i.e., a 3+1 story building. However, the special permit option applies only to properties with conforming frontage on Chestnut Street of 100 ft. As is the case for the Needham Center Overlay District, under the proposed amendment the Planning Board's authority to grant a special permit to increase maximum building height and number of stories in the Chestnut Street Overlay District would be limited to three stories and thirty-seven (37) feet.

The Planning Board has voted to support the portion of the Petitioner's amendment which proposes to amend the Zoning By-Law as it relates to building height and number of stories in Sub-District A of the Needham Center Overlay District. This portion of the amendment would reduce the allowable maximum building height and number of stories currently permitted by special permit from the Planning from four stories and 48 feet to three stories and 37 feet. As relates the Lower Chestnut Street Overlay District, the Board has voted not to support that portion of the Petitioner's amendment. The Planning Board will present its full report and recommendations on this article at the Annual Town Meeting.

RE: Annual Town Meeting Article 11: Amend Zoning By-Law – Farmers Market

This article is submitted on the petition of Jeffrey Friedman et al. The article proposes to amend the Zoning By-Law, Schedule of Use Regulations, so as to allow a non-profit corporation or organization to operate a farmers market where the periodic out door sale of edible farm products, farmer raised flowers, farmer raised plants, firewood, homemade preserves, homemade baked goods, homemade soaps, farm wool products, and similar farm products, including the outdoor display of such merchandise, would be permitted by special permit. Periodic outdoor sale is defined as not more than once a week during the season from May 15 to November 30. The use would be permitted by special permit from the Board of Appeals in all zoning districts except the New England Business Center, Highland Commercial-128, Mixed-Use 128, Neighborhood Business and Elder Services Districts.

The Petitioner will offer a motion to amend under Article 11. The intent of the amendment is to clarify the following intent as relates use: 1) farm items sold at the farmers market shall have been produced on the farm the seller operates with sales made directly to the public by the farmer or the farmer's employee and not through wholesale vendors sales; 2) sales of baked goods made in Needham shall be permitted by the Needham bakery or its employees at the farmers market; and 3) adequate parking and loading areas shall have been provided to serve the farmers market with the special permit granting authority specifically making the noted finding before the use may be permitted. The Planning Board has voted to support the article in its amended form and will offer its full report at Town Meeting. A copy of the motion to amend is attached to this handout for your consideration.

RE: Annual Town Meeting Article 12: Amend Zoning By-Law – Reconstruction of Two-Family Dwellings

This article is submitted on the petition of George Giunta, Jr. et al. The article proposes to amend the Zoning By-Law as it relates to the reconstruction of a non-conforming two-family dwelling in a Single Residence A, Single Residence B or Rural Residence-Conservation district where a two-family use is otherwise prohibited. Presently, the zoning by-law allows, by special permit from the Board of Appeals, for an existing non-conforming two-family house to be reconstructed with

a footprint greater in area than that of the original non-conforming building provided, among other restrictions, that the amount of enclosed garage space is limited to one car per dwelling unit. The proposed amendment would increase the permissible enclosed garage space from one to two cars per dwelling unit subject to further findings from the Board of Appeals regarding the dwelling's scale and mass for the neighborhood, taking into consideration the size, number and location of the proposed garage doors.

The Planning Board is considering an amendment to this article and will present its recommendations on this article at the Annual Town Meeting.

RE: Annual Town Meeting Article 13: Amend Zoning By-Law – Accessory Structures

This article is submitted on the petition of Robert Liza et al. Presently, in the Rural Residence-Conservation, Single Residence A, Single Residence B, General Residence, and Institutional Districts, accessory buildings and structures (excepting fences) are required to be placed at least ten feet from any other building or structure on the lot. This article would permit an exception to the above-noted rule for an accessory pergola. In the subject case, an accessory pergola would be exempted from the minimum 10-foot setback requirement as relates another building or structure on the lot. All other dimensional setback requirements from abutting properties and from streets and ways would remain unchanged.

The Petitioner will offer a motion to amend under Article 13. The intent of the amendment is to ensure that the pergola will not be constructed or placed in a position where it would prevent the use of a designated fire lane or reduce access to any building. The Planning Board has voted to support the article in its amended form and will offer its full report at Town Meeting. A copy of the motion to amend is attached to this handout for your consideration.

RE: Special Town Meeting Article 1: Amend Zoning By-Law – Personal Fitness Service Establishment in an Industrial District

This article would authorize personal fitness service establishments in the Industrial District either by right or by special permit. Presently the use is permitted in Needham's Business, Chestnut Street Business, Center Business, Avery Square Business and Hillside Avenue Business districts.

Under the proposed amendment, personal fitness service establishments would be permitted as-of-right in the Industrial district where the number of off-street parking spaces required to service the fitness use and all other land uses located on the property are provided in accordance with zoning by-law requirements. Personal fitness service establishments having insufficient off-street parking would be permitted by special permit in the Industrial district where it can be demonstrated that the hours, or days, of peak parking for the uses are sufficiently different that a lower parking total would provide adequately for all uses or activities served by the parking lot. Personal fitness service establishments are defined within the zoning by-law as a business which involves instructional and/or directed exercise and fitness activities, including, but not limited to, personal training, yoga, spinning, pilates, exercise and fitness classes and lessons, and related activities; having at least one instructor or supervisor for every 15 clients; a maximum class size of 15 clients; a maximum occupancy at any one time of 20 persons; and a maximum total area of 2,500 square feet.

The Planning Board will offer a motion to amend under Article 1 to address an incorrect reference to Section 5.1.1.6. Parking waivers in the Industrial District are covered solely under

the provisions of Section 5.1.1.5. Accordingly, the amendment deletes the inapplicable reference to Section 5.1.1.6. The Planning Board has voted to support the article in its amended form and will offer its full report at Town Meeting. A copy of the motion to amend is attached to this handout for your consideration.

RE: Special Town Meeting Article 2: Amend Zoning By-Law – Amendment to New England Business Center, Highland Commercial-128 and Mixed Use 128 Districts.

Pursuant to the appropriation last May by Town Meeting, the Council of Economic Advisors (“CEA”), a committee established by the Board of Selectmen to evaluate Town-wide economic conditions and make recommendations to promote and encourage new and existing businesses, and the Planning Board sought the services of an interdisciplinary team lead by a qualified planning, economic development, urban design and traffic firm to undertake a follow-up study of the New England Business Center (“NEBC”) to that originally completed by Goody, Clancy & Associates in 2001. The purpose of the study was to explore recurrent issues raised by local businesses, developers, real estate brokers and tenants during symposia sponsored by the CEA in regards to expanding the type and mix of allowable uses, including medical uses; expanding the allowable amount of restaurant, retail and other consumer service uses on the first floor of multi-story buildings; analyzing which dimensional controls were restraining development; and assessing the traffic and other impacts of proposed changes. The study results are not completely finalized, and Town Meeting should anticipate that some sections of the article will be amended. Accordingly, an updated report on the article will be available at Town Meeting on Wednesday, May 4th along with any recommended amendments.

Changes as currently described in the warrant include expanding allowed uses, expanding the allowed mix of retail, restaurant and consumer services on the first floor, and changes in dimensional controls. Information regarding specific changes is as follows organized and described by amendment number.

1a. Uses permitted as of right in Section 3.2.4.1 include “professionals” but presently exclude “Medical Clinics”. The By-Law amendments proposed regarding medical uses generally are to clarify and create certainty as to such uses allowed by right, allowed by special permit or prohibited in the NEBC, taking proper account of existing language in the By-Law and the impacts by way of traffic and parking of large medical uses.

Confusion has arisen as to what types of medical uses were excluded and which were allowed in the NEBC. Because the definition of “Medical Services Building” was inserted into the zoning by-law when the Medical Overlay District was adopted, and because the language was not mentioned in connection with the NEBC zoning changes in 2001, allowance of uses detailed in that definition within the NEBC was unclear. Because of the impacts of parking and traffic, certain medical uses, like Medical Clinics, were prohibited in the NEBC but others were not mentioned. Under the Zoning By-Law, uses not allowed are prohibited.

Accordingly, this amendment would allow as of right non-group practices of two or fewer medical professionals. Larger professional groups, physical therapy and alternative and other wellness treatment uses will be allowed only upon the issuance of a special permit, given possible impacts on traffic and parking.

The proposed amendment does not change the situation for medical clinics as not being allowed. The amendment clarifies that Medical Service Buildings, as defined in the By-law, are similarly

not allowed, and clarifies what uses within that definition are allowed. Recent proposed uses within the NEBC have been stymied by the lack of clarity regarding these uses.

1.b. The need for services ancillary and supportive of businesses in the NEBC was a recurrent theme of the symposia and study conducted by the Town over the last few years. As evidenced by the Study, such services—restaurants, retail, and consumer services—are severely restricted by our current zoning and represent an outdated office building model. Accordingly, the amendment broadens the profile of uses allowed on the first floor of a multi-story building in the NEBC to address this deficiency. It is expected that an amendment will be proposed to include language presently being considered to limit the use of this section by ‘big box’ retailers. The amendment also resolves the duplicative reference to “professional” in two separate subsections of Permitted Uses in the NEBC, and relocates food uses to specially permitted uses. Because coffee shops and restaurants will not be limited as to size, it was determined that such uses should be subject to special permit.

2.a. This amendment would allow by special permit all restaurant-related uses and specifically prohibits drive-through eating facilities. Due to unique operational issues surrounding restaurant uses, such as parking and traffic, it was determined that such uses should be subject to special permit.

2.b. Group practices, alternative medicine practices, wellness treatment facilities, and physical therapy uses, may have varying impacts on traffic and parking depending on their operational model. This provision would allow such uses by special permit.

3.a. The amendment resolves the duplicative reference to “professional” in two separate subsections of Permitted Uses in the Highland Commercial-128 District, which rendered the permitted medical uses unclear.

3.b. The use of the Highland Avenue corridor for large medical uses was not envisioned by the original study and the impacts in terms of parking and traffic are not appropriate. This amendment clarifies the original intentions.

4.a. The amendment resolves the duplicative reference to “professional” in two separate subsections of Permitted Uses in the Mixed Use-128 District, which rendered the permitted medical uses unclear.

4.b. The Mixed Use-128 area, with its small lots and difficult road layout, was not envisioned for large medical uses by the original study, and the impacts in terms of parking and traffic are not appropriate. This amendment clarifies the original intentions.

5-10. These sections propose amendments to existing dimension requirements within the NEBC district. Under consideration are revisions to floor area ratio, lot coverage, and open space standards currently authorized by right or by Special Permit within the district. Town Meeting should expect that an amendment will be proposed to include these provisions. Final recommendations are pending the final study results and public hearing.

11. The future development of the NEBC depends on Needham’s ability to be responsive to the requirements of new or proposed uses. Successful office parks, such as those located in Waltham and Burlington, have flourished due to the flexibility of their zoning provisions. This amendment will impart greater flexibility into the Zoning By-Law by allowing the Planning Board to waive

dimensional requirements, except height, by special permit after making specific findings as to the propriety of the waivers as to a particular project and location.

RE: Special Town Meeting Article 3: Amend General By-Law – Obstruction of Sidewalks

This is a companion to Article 6 in the 2011 Annual Town Meeting Warrant. Article 6 would allow the Planning Board to permit temporary and seasonal outdoor seating for restaurants on private property; and the Board of Selectmen to permit temporary and seasonal outdoor seating for restaurants on public property. Any approval from the Board of Selectmen would require a separate license or lease of the public land. Compliance, if applicable, with the Selectmen's Alcohol Regulations would be required in either case. This article would amend the General By-Laws so as to accommodate the outdoor seating.

**TOWN OF NEEDHAM
2011 ANNUAL TOWN MEETING
ARTICLE 9 SUBSTITUTE MAIN MOTION**

The following substitute main motion is offered under Article 9. The substitute main motion is offered by

Signature of Town Meeting Member

To see if the Town will vote to amend the Needham Zoning By-Law as follows:

In Section 3, Use Regulations, Subsection 3.1, Basic Requirements, by adding the following paragraph to the end of the section as follows:

“Notwithstanding the uses set forth in the Schedule of Use Regulations (Section 3.2), in all Industrial, Business, and/or Commercial zoning districts, including Mixed Use-128 (a) if the Planning Board determines a use to be in the same general use category and is similar in kind to, and is similar in impact to, a use allowed by Section 3.2 as of right, that use shall be allowed and (b) if the Planning Board determines a use to be in the same general use category and is similar in kind to, and is similar in impact to a use allowed by Section 3.2 by special permit, that use may be allowed by the Planning Board by special permit.”

Or take any other action relative thereto.

**TOWN OF NEEDHAM
2011 ANNUAL TOWN MEETING
ARTICLE 11 SUBSTITUTE MAIN MOTION**

The following substitute main motion is offered under Article 11. The substitute main motion is offered by

Signature of Town Meeting Member

To see if the Town will vote to amend the Needham Zoning By-Law as follows:

1. INSERT A NEW DEFINITION UNDER SECTION 1.3 AT THE APPROPRIATE ALPHAPETICAL LOCATION

A Farmers Market is an outdoor activity organized by a non-profit corporation or non-profit association whereby farmers or their employees display and sell items that have been produced on farms they operate, such as food, flowers, plants, firewood, preserves, baked goods, soaps, wool products and similar items, and vendors employed by establishments located elsewhere within the Town of Needham sell baked goods made in Needham, such sales to be directly to the public by the farmer or the farmer's employee or the bakery establishment or its employee and not through wholesale vendors.

2. INSERT NEW USE CATEGORY UNDER AGRICULTURE in Table 3.2.1 and Table 3.2.2:

Farmers Market, not to exceed once a week, during the season from May 15 to November 30, which may take place on existing parking areas serving other uses, provided that the special permit granting authority determines that adequate parking and loading areas are maintained to serve such other uses during the Farmers Market.

3. INSERT SP in all zoning districts in Table 3.2.1 and Table 3.2.2 for the above use.

Or take any other action relative thereto.

**TOWN OF NEEDHAM
2011 ANNUAL TOWN MEETING
MOTION TO AMEND ARTICLE 13**

The undersigned moves that the text of the main motion under Article 13 be amended by deleting the second sentence in its entirety and replacing it with the following:

“Notwithstanding the foregoing, an accessory pergola need not comply with the requirements of the preceding sentence but said pergola must comply with all dimensional setback requirements from abutting properties and from streets and ways, and said pergola shall not be constructed or placed in a position where it would prevent the use of a designated fire lane or reduce access to any building.”

Or take any other action relative thereto.

The Motion to Amend is offered by:

Signature of Town Meeting Member

**TOWN OF NEEDHAM
2011 SPECIAL TOWN MEETING
MOTION TO AMEND ARTICLE 1**

The undersigned moves that the text of the main motion under Article 1 be amended by deleting the first sentence in its entirety and replacing it with the following:

“Personal fitness service establishment; provided, all required off-street parking is provided on-site for all land uses located on the subject site and in adherence with the requirements of Section 5.1.2, Required Parking, absent any waivers from the provisions of Subsection 5.1.1.5.”

Or take any other action relative thereto.

The Motion to Amend is offered by:

Signature of Town Meeting Member