

Town adapts to changing types of businesses

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- By Devra G. Bailin -

As part of the Town of Needham's continuing efforts to be responsive to the business community's needs and to promote development, the town recently adopted a bylaw that allows more flexibility in the types of businesses allowed in town.

At its 2011 Annual Town Meeting in May, the town approved the following general use regulation, which was fully supported by the Board of Selectmen and the Planning Board at Town Meeting:

"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." (Section 3.1, inserted as last paragraph.)

This provision, which had its genesis in the Economic Development Department and Council of Economic Advisors. It recognized that the ongoing evolution of the types and varieties of businesses has outstripped the defined historical uses designated in the bylaw.

As a result of the limited definitions and/or antiquated use tables, many proposed innovative businesses were unable to locate in Needham, even though they were in the same use category and similar in kind and impact to those allowed either by right or by special permit. Because new businesses do not always conform to historical models, Needham created this mechanism to allow for creativity and innovation.

Even in my short tenure, there had been numerous instances where the allowance of the use was questionable and the lack of mechanism for resolution resulted in businesses walking away from Needham. Examples abound of uses expressly called out versus proposed uses: veterinary office and/or treatment facility versus doggie day care or cat day care; beauty salons/nail or hair

salons versus day spas; bank versus mortgage company; medical professional office versus alternate wellness center; grocery store versus health food store; office versus internet hotel/telecommunications office; warehouse versus recycling facility; and manufacture versus food processing (for wholesale? for retail?), just to name a few.

The zoning amendment imparted a measure of flexibility into the bylaw by allowing the Planning Board to determine if a use is in the same general use category and is similar in kind and in impact to a use already allowed in a particular district either by right or by special permit. If the Planning Board determines the proposed use to be in the same general use category and similar in kind to and similar in impact to a use allowed as of right, then the use shall be allowed. If the Planning Board determines the proposed use to be in the same general use category and similar in kind to and similar in impact to a use allowed by special permit, then the use may be allowed by the Planning Board by special permit.

The Economic Development Department has created a so-called Application for Determination of Proposed Use under Section 3.1 of the Zoning By-Law. In addition to the actual application, the document sets out the guidelines and standards for determining where a proposed use fits, if it does, within the uses already expressly allowed

in the Zoning bylaw; details the review process; establishes the effect of favorable use determinations; and clarifies the time limit of the determination.

The application, in addition to asking basic information about the applicant and property, requests a clear, complete and detailed description of the proposed use; a description of the use or uses in the zoning district which, in the opinion of the applicant, are most similar in kind and impact to the proposed use; a brief description of other uses on the site; and a breakdown of how the space will be used by the proposed operation. There is also an application checklist and certification which accompanies the descriptive provisions.

The Planning Board has already utilized the Use Determination process to approve a Gymboree facility. The Town of Needham is committed to fostering economic development and to assisting proposed businesses through its Planning and Community Development Department.

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