

From: Ethan Croce
Sent: Thursday, October 04, 2012 2:29 PM
To: Melissa Tryon; Amanda Stearns
Subject: PB MRA Hearing - 10.02.12 - Proposed amendments to Section 3.6 re:
Ground floor area tenant size limitations

At its October 2, 2012 meeting, the Planning Board, acting as the Town's designated Municipal Reviewing Authority, held a public hearing on proposed amendments to the Zoning and Site Plan Review Ordinance relative to ground floor area tenant size limitations in the SB1 District.

Two individuals spoke at the public hearing.

Mary Costigan, attorney for Bernstein Shur, spoke on behalf of the current owner of the Falmouth Shopping Center. She expressed concern regarding how the proposed amendment would apply to existing tenant space. Ms. Costigan believes it is not clear as to how the current draft of the ordinance applies to existing tenant space that is vacant and not currently occupied. The owners of the shopping center would prefer for there to be no size limitations imposed, however, if there is going to be a limitation she would like to ensure that the ordinance allows for the maximum level of flexibility with respect to reconfiguring existing tenant space in the shopping center, regardless of whether or not the tenant space is currently occupied or vacant.

Ms. Costigan also believed there needs to be clarification as to whether the proposed ordinance amendment only sets a limit on ground floor area or whether the proposed amendment also limits the size of tenants on upper floors. She stated that Councilor Rodden, at the Council's recent public hearing, gave an example stating that a tenant with 30,000 square feet of ground floor area could have a maximum overall tenant space of 75,000 square feet in a 2.5 story building. Ms. Costigan said that the current ordinance draft, however, appears to set no limit on the overall size of tenant space.

Phil Saucier, attorney for Bernstein Shur, spoke on behalf of Walmart. Mr. Saucier believes that the current ordinance draft arguably does not exempt Walmart's recent site plan approval for their store expansion. He believes that it has been the intent of the Council all along to exempt the Walmart project. He believes that the problem lies in the wording that limits exemptions to tenant space "existing as of the date of adoption" of the ordinance provision. Since Walmart has not built their new tenant space yet, he believes it could be argued that the Walmart expansion is not exempt. He suggested adding a provision that would also exempt projects that have received site plan approval from the Town.

The Planning Board then closed the public hearing and held deliberations.

Planning Board member Chace mentioned that there may be some unintended consequences of the proposed ordinance. By creating a new definition for "grocery retail" the Hannaford store at West Falmouth Crossing could become nonconforming under this amendment. The suggestion was made to add "grocery retail" as a use in the other zoning districts where retail and service establishments are currently allowed. Mr. Chace also questioned whether it was the intent to limit the square footage of commercial establishments in the SB1, the most intensive business district, but not to limit their size in the Town's residential districts.

Planning Board Chair Lunt believes that not enough thought has been given to this ordinance amendment, based in part on the aforementioned unintended consequences. Mr. Lunt is hesitant to have the Planning Board make a recommendation on this issue tonight in light of the fact that it seems, based on the discussions at the last Council meeting, that the ordinance amendment will be altered quite a bit from how it is currently written. This puts the Planning Board at a disadvantage in issuing a recommendation on the ordinance because the Board does not know what the final language will look like. Mr. Lunt recommended that the Planning Board recommend for the Council not to pass the ordinance to allow them more time to do research and identify other potential unintended consequences.

Board member Chace suggested that it may be possible to draft an ordinance whereby a developer could exceed the proposed square footage limitations if the project was designed to exceed certain performance standards.

Chair Lunt said this amendment seems to be directed at one property. Mr. Lunt referred to a public participation charrette that was held a few years ago for the Falmouth Shopping Center property. Mr. Lunt said that the charrette was paid for by the owners of the Shopping Center and the outcome of that charrette was, he believes, a suggestion for a square footage cap of 90,000 square feet. Mr. Lunt would like to know why the Council is now changing that square footage limitation and not respecting the outcome of the charrette process. Mr. Lunt would like the Planning Board to ask the Council to look at this amendment some more and provide better justification for it.

Board member Benzing said it appears as if the ordinance was hastily put together to prevent a project from coming in. He said that the Town can deal with projects on a case by case basis when they come in for development and if a project doesn't conform to the Town's vision the project can be denied at that time.

A motion was made by Bill Benzing to recommend that the Council not approve the proposed amendment at this time based on the discussions at the meeting tonight. The motion was seconded by Kermit Stanley. The motion passed 5-0.