



CITY OF CAMBRIDGE

Community Development Department

To: Planning Board

From: Community Development Department (CDD) Staff

Date: March 4, 2021

Re: **Retail or Consumer Service Establishments & Home Occupations Zoning**

Update

On December 1, 2020, the Planning Board held a hearing on two City Council Zoning Petitions, one to amend and restructure base zoning regulations related to retail or consumer service establishments and one to amend current zoning for accessory home occupations. The Ordinance Committee was not able to hold a hearing on the petitions, and so the petitions have been refiled for new hearings in their original form.

The petitions' goals are to modernize zoning requirements for these uses, resolve longstanding issues with implementation, and align zoning with the City's current planning objectives. Planning Board members expressed strong support for this effort overall, but voiced a desire to have further discussion on the details of the proposal and provide input into how it could be improved. Staff looks forward to these future discussions.

Board members also raised many questions, which staff have summarized into different topic areas on the following page. The remainder of this memo responds to each of these questions in a way that can inform further discussions.

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Planning Board Questions

Definition/Classification of Retail Uses

- What is the meaning of the terms “principal purpose,” “principal function,” and “primary function”? Is there a distinction among them? How does this apply when a use might have multiple functions?
- How does the definition of “Bar” relate to “Restaurant,” where a restaurant might contain a bar that permits people to order drinks without meals?
- Does a “Dance Hall or Nightclub” include establishments supported by alcohol sales or something other than a use or membership fee?
- Do the proposed definitions clearly distinguish between “Restaurants” and “Fast Order / Quick Service Food Establishments”? Is there a need for such a distinction?
- Do Food Stands/Kiosks include food trucks?

District Use Regulations for Retail Uses

- Why are animal services restricted?
- Why are arts uses not permitted in office districts?
- In office districts, why not also allow retail uses at the basement level?
- How does the base zoning relate to special districts?
- In the BB-1 and BB-2 districts, what is the logic for not allowing Dance Halls but allowing Theaters and Commercial Recreation?
- Why not permit Restaurants in residential districts the same as Fast Order/Quick Service Food Establishments?
- For non-conforming retail spaces in residential districts, why limit special permits for 5 years unless specified otherwise, when most retail leases are likely 10 years or longer?
- Why prohibit retail in residential districts if the site previously had a residential use, when there may be a desire for new housing with retail in residential districts and the special permit process can control for adverse consequences?

Home Occupations

- Is this standard too limiting given that in many cases, more than one member of a household may be working from home?
- What does “another recognized profession” mean in this context?
- Can the list of allowable Home Occupations be identified as illustrative of a broader potential range of uses, rather than limiting the range of allowed uses?
- Can in-home child care be included as an allowed Home Occupation?

Definition/Classification of Retail Uses

What is the meaning of the terms “principal purpose,” “principal function,” and “primary function”? Is there a distinction among them? How does this apply when a use might have multiple functions?

Zoning regulates “principal uses,” which refers to the primary uses of land within a district. Examples of principal land uses include single-family residences, multifamily residences, general office buildings, and storage warehouses. It is important for the Zoning Ordinance to specify which principal uses are allowed, because if it is determined that a particular use is not identified in the Zoning Ordinance, it is therefore prohibited.

A principal use might also contain “accessory uses,” which are incidental to the principal use and are treated as a component of the principal use rather than a stand-alone use. For example, an office building might include a cafeteria for employees, and a warehouse might contain a back office for management. However, if the cafeteria were open to the general public, or the office were used for something other than warehouse management, those could be determined to be separate principal uses because they are not entirely subordinate to the principal use. Some accessory uses are identified in Section 4.20 of the Zoning Ordinance, but in general, the Superintendent of Buildings determines whether a use is considered accessory. It is not unusual for a site to contain multiple principal uses, which is allowed so long as each principal use is allowed in the zoning district.

One of the challenges identified in this retail zoning initiative is that because a retail establishment often contains multiple functions, it can be challenging to determine what uses are considered principal and what are accessory. Such determinations are often made on a case-by-case basis, so retail owners with innovative or hybrid business models cannot always tell in advance whether the use will be allowed.

The approach taken with this proposal is to continue to define distinct types of retail establishments, and focus on regulating those uses in a way that is more consistent with the City’s planning and policy goals. The proposed new section in Article 4.000 is intended to clarify circumstances in which multiple principal uses may be permitted in an establishment. However, it does not clarify the point described above, that a retail establishment may contain different principal functions.

Possible Improvements:

- *Use a consistent term that more clearly conveys the idea that retail activities are distinct principal functions of a retail establishment. See example text modifications below:*

Retail or Consumer Service Establishment. ~~An establishment~~ principal land use ~~whose principal purpose~~ *is the commercial provision of goods, personal services, prepared food and beverage, entertainment, recreational activities, and similar services (but excluding professional or financial services) directly to consumers. Such provision of goods and consumer services shall be conducted on-site, but may be supplemented by telephone and online transactions and delivery services.*

Convenience Store. *A type of Retail or Consumer Service Establishment* ~~whose that includes, as a principal use, function~~ *is the retail sale of convenience goods directly to consumers, such as drug stores, food stores, tobacco, newspaper and magazine stores, variety stores, and liquor stores, not exceeding 5,000 square feet in total sales area (excluding storage).*

- Consider language in the proposed Section 4.210 to clarify that multiple retail and consumer service uses are allowed within an establishment if each of the individual principal uses is allowed. See potential text modification below:

4.210 Establishments with Multiple Principal Uses

(a) Except as provided in Paragraph (b) below, a Retail or Consumer Service Establishment that includes more than one principal use shall be permitted to the extent that each of the principal uses is allowed in the district.

(b) Additional Allowed Retail ~~and/or~~ Consumer Service Uses. The following Retail ~~and/or~~ Consumer Service Uses shall be permitted as additional allowed principal uses at a property with another principal non-residential use, provided that they occupy no more than 25% of the total Gross Floor Area of the other principal use, or that they are limited in duration to no more than 25% of the total hours of operation of the other principal non-residential use on a weekly basis. Any Retail or Consumer Service Use conforming to the limitations set forth herein shall be allowed as a principal Retail or Consumer Service Use at a property but shall be exempt from the following requirements: No additional parking or loading facilities shall be required or provided for the additional Retail or Consumer Service Use (additional bicycle parking may be provided but shall not be required), and signage requirements set forth in Article 7.000 of this Zoning Ordinance shall be calculated for the property as a whole rather than individually for each component use. All Retail and Consumer Service Uses shall conform to all applicable licensing requirements and all other laws, codes, and regulations.

(1) Sales. The display and sale of goods that are directly related to the operation of the other principal use at the property and are intended for sale to occupants, patrons, or visitors of the other principal use, including but not limited to supplies that are utilized in the operation of the other principal use or promotional materials for the other principal use.

(2) Programs and Services. On-site activities including but not limited to minor repairs, instructional classes, presentations, workshops, consultations, or similar programs and services provided to occupants, patrons, or visitors of the other principal use.

(3) Food and Beverage Service. The provision of meals, snacks, beverages, and other food products prepared on-site or off-site and intended for consumption on-site by occupants, patrons, or visitors of the other principal use.

(4) Entertainment and Recreation. The provision of activities including but not limited to live or recorded music, video entertainment, other live performances, group games or contests, or other entertainment or recreational activities for the enjoyment of occupants, patrons, or visitors of the other principal use.

How does the definition of “Bar” relate to “Restaurant,” where a restaurant might contain a bar that permits people to order drinks without meals?

This question is related to the discussion above. A restaurant might have a bar area that serves the restaurant, which might be considered an accessory use, but might also have a bar that serves alcoholic beverages to non-diners, which is a principal use. Establishing bars as a permitted principal use in the Zoning Ordinance would ensure that they are allowed in districts where they are desirable. Bar and restaurant uses all are subject to licensing laws pertaining to those uses.

Possible Improvements:

- *See points above about clarifying how multiple principal functions may be permitted. In the regulations section, ensure that Bars are a permitted use where they are desired.*

Does a “Dance Hall or Nightclub” include establishments supported by alcohol sales or something other than a use or membership fee?

The intent behind the proposed definition is to distinguish between establishments that contain dancing and entertainment as a principal commercial function and restaurants or bars that might have much more limited entertainment that would be considered accessory (such as background music or televisions). In some cases, an entertainment function may be considered a principal function even if it is financially supported by some means other than a direct fee. This could be clarified in the definition. It should also be noted here that these uses are also subject to licensing laws.

Possible Improvements:

- *Include in the definition language to the effect of “... for which patrons are charged a use or membership fee or required to make other purchases to participate.”*

Do the proposed definitions clearly distinguish between “Restaurants” and “Fast Order / Quick Service Food Establishments”? Is there a need for such a distinction?

For many years, Cambridge’s zoning has regulated “restaurants” and “fast order food establishments” as distinct principal uses. In zoning, the distinction is not related to ownership or food quality or other aspects of the business that could be labeled “fast food,” but the manner in which the food is served. Restaurants provide dine-in and table service, while fast order food establishments provide to-go service on a quick timeframe. The proposed name change to “Fast Order / Quick Service Food Establishment” is intended to indicate that they include more types of business than one might assume are considered “fast food.”

As discussed in the points above, an establishment could combine aspects of both sit-down dining and carry-out food, so long as both types of use are allowed. It is possible that the language specifying that a Fast Order / Quick Service Food Establishment is “not otherwise defined as a Restaurant ...” could be confusing in this regard.

As a matter of policy, the City Council could decide to delete Fast Order Food Establishment as a distinct use, but it would need to explicitly fall within the definition of some other type of land use, otherwise it could result in being prohibited everywhere (see above). Another approach is to retain the specific use (potentially changing the name to “Quick Service Food Establishment” or something similar) and to change the use regulations, potentially regulating the use identically to a Restaurant. In that case, it could still be regulated separately if the City decides there is a reason to do so in the future.

Possible Improvements:

- *Modify definition to clarify that the use would not exclude other co-located uses, and consider applying use regulations that are more consistent with other food service uses. See potential text modifications below.*

~~Fast Order or Quick-Service Food Establishment.~~ *A type of Retail or Consumer Service Establishment, not otherwise defined as a Restaurant or Bar, Food Stand or Kiosk, or Food Hall, whose primary function is that includes, as a principal use, the service of food or beverages available upon a short waiting time and packaged and presented in such a manner that it can be readily eaten on or off the premises, but is larger in area than a Food Stand or Kiosk.*

Do Food Stands/Kiosks include food trucks?

As discussed at the Planning Board meeting, food trucks that operate on the public way are not regulated through zoning. However, if a food truck is parked and operating on a private lot, then for purposes of zoning it could be considered a Food Stand or Kiosk if it is a permanent use, or as a Temporary Open-Air Retail Establishment if it only operates for a limited period of time (as is often the case with food trucks). Such determination will be dependent on the facts. Food trucks are also subject to a separate licensing process.

District Use Regulations for Retail Uses

Why are animal services restricted?

Animal Services Facilities, such as veterinary clinics, were reviewed as part of this initiative. They are found primarily in commercial districts and are not heavily clustered in particular areas of the city. They are currently allowed in all Business districts and most Industry districts by special permit. The petition proposes two key changes – to allow Animal Services Facilities in Office districts (by special permit) and higher-intensity Industry districts (as-of-right).

Because animal service facilities are allowed in all non-residential districts, the only less restrictive approach would be to allow them as-of-right rather than by special permit. However, the special permit process can be helpful if site-specific conditions are necessary to ensure that noise and odors are controlled, as required by zoning. Since there are few such establishments in Cambridge and they do not turn over frequently, the special permit process does not seem particularly onerous, therefore it was retained in this proposal.

Why are arts uses not permitted in office districts?

This initiative does not propose any substantive change to Art/Craft studios, which are allowed as-of-right in Business and Industry districts, and by special permit (from the BZA) in Office and multifamily Residential districts if they meet criteria in Section 4.28. The primary change being proposed is to regulate Performing Arts Studios in the same manner that Art/Craft Studios are currently regulated.

The only way that the zoning could be made less restrictive would be to eliminate the requirement for a special permit in Office and/or Residential districts. That could be a policy decision, but would require a careful look at Section 4.28 to determine which criteria remain relevant to the City Council and which could be practically applied through administrative zoning review instead of by the BZA.

In office districts, why not also allow retail uses at the basement level?

Allowing retail uses in Office districts is one of the significant changes in the current petition, and is meant to align with overall planning goals to encourage retail use and street activation in major commercial centers that are zoned Office. The intent is to permit a range of uses as-of-right so long as they are contained within mixed-use development, to discourage stand-alone shopping centers, and are at the ground floor with entrances at the street level. Variations could be approved by special permit. Allowing retail uses at the basement level would be consistent with this intent, so long as uses retain an entrance at the street level. In some instances, flood risk could be a concern; this issue is being considered by the Climate Resilience Zoning Task Force.

Possible Improvement:

- *Amend footnote to read, “Retail or Consumer Service Establishments shall be located at the Ground Story and/or below Grade with entrances accessible to pedestrians directly from public sidewalks ...”*

How does the base zoning relate to special districts?

The zoning districts listed in Section 4.30 are the “ordinary” base zoning districts, but the Zoning Ordinance also contains special base zoning districts and overlay zoning districts with modified use regulations. Many special or overlay districts refer to the use regulations of ordinary base districts, but often include specific modifications, and in some cases contain their own separate lists of permitted uses. This makes tracking use regulations across the City extremely difficult. Nevertheless, the maps presented at the previous Planning Board hearing attempt to illustrate the current and proposed regulations for certain uses across all base districts, including special districts.

It was not the intent of this initiative to make major modifications to the use regulations in special districts or overlay districts, because most of them were created through planning studies, and it was beyond the scope of this effort to reevaluate past area-specific planning and zoning processes. However, the use regulations in special districts will change if they reference the use regulations of other base districts in Section 4.30. Additional changes could be considered if they align with citywide goals, or through subsequent planning studies of these special planning areas.

In the BB-1 and BB-2 districts, what is the logic for not allowing Dance Halls but allowing Theaters and Commercial Recreation?

Business B-1 (BB-1) and Business B-2 (BB-2), despite being listed in Section 4.30, are also similar to “special districts” because they exist only in a specific area on Massachusetts Avenue between Central Square and Harvard Square and were created through a community-initiated planning and zoning effort. One outcome of this rezoning is that BB-1 and BB-2 have more restrictions on some retail uses than other Business B districts. Changes could be considered, but as noted above, reevaluating area-specific zoning processes was beyond the scope of this initiative.

Why not permit Restaurants in residential districts the same as Fast Order/Quick Service Food Establishments?

The limited set of uses allowed by special permit in residential districts was chosen based on what uses are most likely to provide conveniences to residents, and therefore more likely to benefit from being in a residential area. Looking at the maps generated for this exercise, Fast Order / Quick Service Food Establishments are more likely to be found dispersed throughout the city (including areas where they are non-conforming), while dine-in Restaurants tend to be clustered in commercial areas where they are more successful. The range of permissible retail uses could be expanded to include Restaurants, if the City Council believes that they would be a preferable use in residential areas.

For non-conforming retail spaces in residential districts, why limit special permits for 5 years unless specified otherwise, when most retail leases are likely 10 years or longer?

The imposition of a time limit on the special permit is a typical approach when a use that would not otherwise be permitted as of right is established, based on the principle that a zoning district should over time develop in favor of uses that are allowed in the district. However, lease terms are an important practical consideration.

Possible Improvements

- *Extend the standard special permit duration to 10 years, and/or make explicit that a longer timeframe may be requested by an applicant to align with lease terms where applicable.*

Why prohibit retail in residential districts if the site previously had a residential use, when there may be a desire for new housing with retail in residential districts and the special permit process can control for adverse consequences?

The special permit provision is intended as a very narrowly constructed option to address situations throughout the city where an existing non-residential building could be maintained for uses that are not residential but may be beneficial in a district that otherwise only permits residential uses.

If the intent were to encourage more retail use in an otherwise predominantly residential area, a more straightforward approach would be to consider rezoning such areas to a designation that allows retail uses, either as-of-right or by special permit. An example of this approach is the Business A-3 (BA-3) district, which was created to rezone the Western Avenue corridor. BA-3 is largely a residential district, but allows limited retail uses at the ground floor. The current initiative was not intended to rezone or reclassify areas of the city, but alternative zoning classifications could be considered and could be applied to specific areas based on neighborhood studies or community-based planning initiatives.

A broader consideration is that there is not an unlimited capacity to support retail business in Cambridge, particularly considering the challenges faced by brick-and-mortar retail both before and during the COVID-19 pandemic. Allowing retail uses in more areas won't necessarily create more retail businesses, and could result in a dispersion affecting commercial districts that need a critical mass of retail to be sustained.

Home Occupations

Is this standard too limiting given that in many cases, more than one member of a household may be working from home?

The concept of a “home office” occupation in current zoning may reflect the expectations of a different time, when a home office might constitute a professional practitioner such as a doctor or lawyer seeing patients or clients, with a small support staff. In today’s context, a household might contain multiple adults working from home some or all of the time. The changing nature of home work could be reflected in the proposed zoning, and also highlights the need for some flexibility to account for future changes that might occur.

Possible Improvement:

- *Change “... no more than one person is practicing or employed on the premises at any one time unless otherwise specified below ...” to “... only residents of the household are practicing or employed on the premises at any one time unless otherwise specified below ...” and amend paragraph (1) accordingly.*

What does “another recognized profession” mean in this context?

As discussed above, the current provisions for “home office” occupations reflect an expectation of office work that is different from today’s, and is focused more on traditional types of professional occupations. There is no explicit standard for what is a “recognized” profession, so that term may not have practical relevance.

Possible Improvement:

- *Delete the word “recognized.”*

Can the list of allowable Home Occupations be identified as illustrative of a broader potential range of uses, rather than limiting the range of allowed uses?

As discussed at the beginning of this memo, Home Occupations are treated as a type of “accessory use,” which are allowed if they are incidental to the allowed principal residential use. It is generally within the discretion of the Superintendent of Buildings to make a determination of whether a use can be considered accessory. However, it is also possible that by listing some of the Home Occupations that are allowed, it could create confusion as to whether other Home Occupations are intended to be more limited.

Possible Improvement:

- *Add language to the effect that “The following Home Occupations, along with other occupations that are incidental and accessory to the principal residential use, shall be considered ...”*

Can in-home child care be included as an allowed Home Occupation?

Child care is treated as a principal Institutional Use, listed in Section 4.32.b.1 of the Table of Use Regulations. It is permitted in most districts, including residential districts, but is limited in some cases

by the Institutional Use Regulations in Section 4.50. Under Massachusetts state zoning law, G.L. c.40A, §3, a “Family child care home and large family child care home... shall be an allowable use unless a city or town prohibits or specifically regulates such use in its zoning ordinances or by-laws.”