



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

WESTERN MASSACHUSETTS DIVISION  
1350 MAIN STREET  
SPRINGFIELD, MASSACHUSETTS 01103-1629

THOMAS F. REILLY  
ATTORNEY GENERAL

(413) 784-1240  
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December 8, 2005

Tracy K. Kenney, Town Clerk  
801 Washington Street  
Canton, MA 02021

**RE: Canton Special Town Meeting of October 24, 2005 — Case # 3652  
Warrant Articles # 13 and 14 (Zoning)**

Dear Ms. Kenney:

Articles 13 and 14 - I return with the approval of this Office the amendments to the town by-laws adopted under these Articles on the warrant for the Canton special town meeting that convened on October 24, 2005.

**Note:** Under G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of this section. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

If the Attorney General has disapproved and deleted one or more portions of any by-law or by-law amendment submitted for approval, only those portions approved are to be posted and published pursuant to G.L. c. 40, § 32. We ask that you forward to us a copy of the final text of the by-law or by-law amendments reflecting any such deletion. It will be sufficient to send us a copy of the text posted and published by the Town Clerk pursuant to this statute.

Nothing in the Attorney General's approval authorizes an exemption from any applicable state law or regulation governing the subject of the by-law submitted for approval.

Very truly yours,

THOMAS F. REILLY  
ATTORNEY GENERAL

by: Kelli E. Gunagan, Assistant Attorney General  
By-law Coordinator, Municipal Law Unit  
1350 Main Street, 4<sup>th</sup> Floor  
Springfield, MA 01103-1629  
(413) 784-1240, x 117

enc.  
pc: Town Counsel



**SPECIAL TOWN MEETING**

**OCTOBER 24, 2005**

**ARTICLE 13**

**PROPOSED AMENDMENT TO ZONING BY-LAW – MIXED USE OVERLAY DISTRICT BY-LAW**

**Article 13** To see if Town Meeting shall amend Section 5.10 of the Zoning By-law, Mixed Use Overlay District, by amending Section 5.10.5 MIXED USES by adding the following new Section (e):

Section 5.10.5

e. Density: No building or structure shall be designed, arranged or constructed and no building, structure or land shall be used, in whole or in part, which exceeds the densities specified below for residential and nonresidential uses.

- One dwelling unit per 5,000 s.f. of "buildable lot area", plus
- One thousand (1,000) gross square feet of non-residential floor area per 10,000 s.f. of "buildable lot area" or portion thereof.

And by deleting Section 5.10.7.1(c) which states "In all districts: There shall be no less than 20% "open space" as defined in Section 4d,"

and replacing it with the following:

"7.1 (c) all districts:

There shall be no less than 30% "open space" as defined in Section 4d."

And by amending Section 5.10.4 to add the following new Section d. and relettering existing Sections d through h accordingly:

"Gross Square Feet Of Non-Residential Floor Area" the total non-residential floor area contained within exterior walls but does not include basement space used for heating and utilities, storage or for automobile parking.

***Board of Selectmen for the Planning Board***

**Article 13:** The Finance Committee recommendation is as follows:

**MOVED:** That the subject matter of this article be deferred to the Planning Board.

**FINANCE COMMITTEE VOTE: 9-0-0**

The following motion has been provided by the Planning Board:

**MOVED:** That Section 5.10 of the Zoning By-law, Mixed Use Overlay District, be hereby amended as follows:

1) Section 5.10.5 MIXED USES is hereby amended by adding the following new Section (e) as follows:

**Section 5.10.5**

e. Density: No building or structure shall be designed, arranged or constructed and no building, structure or land shall be used, in whole or in part, which exceeds the densities specified below for residential and nonresidential uses.

- One dwelling unit per 5,000 s.f. of "buildable lot area", plus
- One thousand (1,000) gross square feet of non-residential floor area per 10,000 s.f. of "buildable lot area" or portion thereof.

2) Section 5.10.7.1(c) which states "In all districts: There shall be no less than 20% "open space" as defined in Section 4d," is hereby deleted and replaced with the following:

"7.1 (c) all districts:

There shall be no less than 30% "open space" as defined in Section 4d."

3) Section 5.10.4 be hereby amended by addition the following new Section d. and re-lettering existing Sections d through h accordingly:

"Gross Square Feet Of Non-Residential Floor Area" the total non-residential floor area contained within exterior walls but does not include basement space used for heating and utilities, storage or for automobile parking.

**PLANNING BOARD VOTE: 4-0**

Peter Pineo, Chairperson of the Planning Board moved that the following amendment be made to the Planning Boards motion written in the warrant:

"This by-law shall not apply to any Special Permit granted under Section 5.10 prior to October 24, 2005."

Mr. Pineo explained that a Special Permit has been granted under this by-law and this amendment is to insure that any changes voted at this town meeting will not effect any applications previously made. Mr. Pineo also stated, "The Planning Board voted 4-0 in favor of the adoption of Article 13. The Mixed Use Overlay District (MOD) was passed by Town Meeting two years ago. This Article further amends that Article by a specific housing unit "density" formula and a commercial or retail square footage formula."

Attorney Paul Schnieders stated that this amendment will not be applied retroactively but is a forgoing amendment to a mixed use overlay.

At the suggestion of Town Counsel Paul Derensis, Peter Pineo made a change to the language of the amendment to read "The amendments to Section 5.10.4, 5.10.5, 5.10.7 voted on October 24, 2005 shall not apply to any Special Permit granted under Section 5.10 prior to October 24, 2005."

Greg Pando suggested that rather than making last minute amendments to the article from the floor on the night of town meeting, this article should be brought back at the Annual Town Meeting of 2006.

Attorney Schneiders explained that he submitted the amendment six weeks ago and respectfully disagrees with Town Counsel regarding the need to change the proposed language of the amendment but did agree that using either wording the result is the same. He also reiterated that this amendment did not come up tonight but was submitted weeks ago and feels the language is very clear.

Town Counsel Paul Derensis explained that the amendment stated "this by-law shall not apply", the by-law is the zoning by-law and basically says that the entire zoning by-law would not apply which goes too far. The intent is that only the amendments before town meeting tonight shall not apply to a special permit granted prior to tonight.

Peter Pineo apologized for any confusion and stated that because a special permit has already been granted to a developer who has not yet started construction he feels this article should be acted on tonight to clarify that this amendment does not affect any previous permits issued because it "could potentially put a developer in jeopardy".

Greg Pando stated that although he is a member of the Zoning Board of Appeals, he is speaking as a private citizen and feels that there is no reason that this article cannot be made correct and brought back at the 2006 Annual Town Meeting and feels very uncomfortable approving an article with last minute amendments being presented to town meeting and would urge this article be defeated.

Peter Pineo clarified that if the by-law change as a whole is not acted on there is "absolutely no density control" in the by-law "it means if you apply for a special permit under this by-law and you want to come up with, perhaps, one hundred and seventy units on three acres there may be a possibility you could do something like that" and urged town meeting not to through out the entire article because of a little confusion over a clarifying amendment.

Diane Gustafson stated that she believes that the amendment now appearing on the screen is clear and simple clarifying language in an existing by-law and would urge town meeting to take action on the Planning Boards recommendation.

Moderator Brewster Gifford clarified that the vote would be on the motion printed in the warrant with the addition of the wording which appears on the screen.

VOTED: That Section 5.10 of the Zoning By-law, Mixed Use Overlay District, be hereby amended as follows:

1) Section 5.10.5 MIXED USES is hereby amended by adding the following new Section (e) as follows:

Section 5.10.5

e. Density: No building or structure shall be designed, arranged or constructed and no building, structure or land shall be used, in whole or in part, which exceeds the densities specified below for residential and nonresidential uses.

- One dwelling unit per 5,000 s.f. of "buildable lot area", plus
- One thousand (1,000) gross square feet of non-residential floor area per 10,000 s.f. of "buildable lot area" or portion thereof.

2) Section 5.10.7.1(c) which states "In all districts: There shall be no less than 20% "open space" as defined in Section 4d," is hereby deleted and replaced with the following:

"7.1 (c) all districts:

There shall be no less than 30% "open space" as defined in Section 4d."

3) Section 5.10.4 be hereby amended by addition the following new Section d. and re-lettering existing Sections d through h accordingly:

"Gross Square Feet Of Non-Residential Floor Area" the total non-residential floor area contained within exterior walls but does not include basement space used for heating and utilities, storage or for automobile parking.

The amendments to Section 5.10.4, 5.10.5, 5.10.7 voted on October 24, 2005 shall not apply to any Special Permit granted under Section 5.10 prior to October 24, 2005.

ADOPTED VOICE VOTE, MORE THAN TWO-THIRDS

A true copy.

Attest:

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Tracy K. Kenney, Town Clerk

**SPECIAL TOWN MEETING**

**OCTOBER 24, 2005**

**ARTICLE 14**

**PROPOSED AMENDMENT TO ZONING BY-LAWS – ADDING SUBSECTION F TO SECTION 2.15.2**

**Article 14** To see if the Town will vote to amend the town’s zoning by-laws, as most recently amended, by adding the following Subsection F to Section 2.15.2:

F. In a Limited Industrial District, the Board of Appeals may, in a specific case issue a Special permit for a car wash, or to take any other action in relation thereto.

***Petition for by Attorney Paul Schneiders and ninety-nine others***

**Article 14:** The Finance Committee recommendation is as follows:

**MOVED:** That the subject matter of this article be deferred to the Planning Board.

**FINANCE COMMITTEE VOTE: 9-0-0**

The following motion has been provided by the Planning Board:

**MOVED:** That the town’s zoning by-laws, as most recently amended, be amended by adding the following Subsection F to Section 2.15.2:

"F. In a Limited Industrial District, the Board of Appeals may, in a specific case issue a Special permit for a car wash"

**PLANNING BOARD VOTE: 5-0**

Finance Committee Chairperson Jon Arata moved that the subject matter of Article 14 be deferred to the Planning Board.

Peter Pineo, Chairperson of the Planning Board moved that the town’s Zoning By-Laws, as most recently amended, be amended by adding the following Subsection F to Section 2.15.2:

"F. In a Limited Industrial District, the Board of Appeals may, in a specific case issue a Special Permit for a car wash".

Mr. Pineo stated “The Town currently only allows car washes in an Industrial Zone. This would now allow car washes in all Limited Industrial Zones with a Special Permit. The majority of the

Board felt that the threshold for a Special Permit is very high and additional conditions may be imposed by the Zoning Board to protect abutting properties.” Mr. Pineo also stated that the Planning Board vote was 4-1 in favor of adoption of Article 14, not 5-0 which is printed in the warrant.

Paul Schneiders, attorney for Ronen Drory stated that there has not been a car wash in Canton for over twenty years. “The zones where car washes are allowed are primarily near residential areas or in remote sections of the Town...This article would give the Zoning Board the right to allow a car wash in a Limited Industrial District. Most of our Limited Industrial land is along Route 138 – where a car wash really belongs. This article does not permit a car wash as a right in a Limited Industrial zone...It simply gives the Zoning Board the right to determine whether a particular operation belongs at a particular site. In granting the necessary Special Permit, the Zoning Board and other town boards could greatly regulate the operation...We respectfully ask that you vote for this zoning change.”

VOTED: That the town’s Zoning By-Laws, as most recently amended, be amended by adding the following Subsection F to Section 2.15.2:

“F. In a Limited Industrial District, the Board of Appeals may, in a specific case issue a Special Permit for a car wash”.

ADOPTED SHOW OF HANDS. MORE THAN TWO-THIRDS

A true copy.

Attest:

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Tracy K. Kenney, Town Clerk