



ARTICLE 29: Concord Center Formula Business Bylaw

ARTICLE 29. Zoning Bylaw Amendment Formula Business Bylaw

Mr. Johnson moves:

That the Town take affirmative action on Article 29 as printed in the Warrant except to replace the third sentence in the second paragraph under Section 3.3.2 to read “When either applicable limit is reached, no new formula businesses may be established in the applicable district until and unless an existing formula business closes, adapts so that it no longer qualifies as a formula business, or relocates outside of the affected business district.” and replace the period with a semicolon at the end of Section 3.3.4(d).

Note to Moderator: 2/3 Vote Required

Background: Existing Bylaw

In 2011, Town Meeting approved:

- A definition of formula business
- A limit of ten formula businesses in the West Concord Business and West Concord Village Districts (combined)
- A special permit process for establishing, expanding or relocating formula businesses

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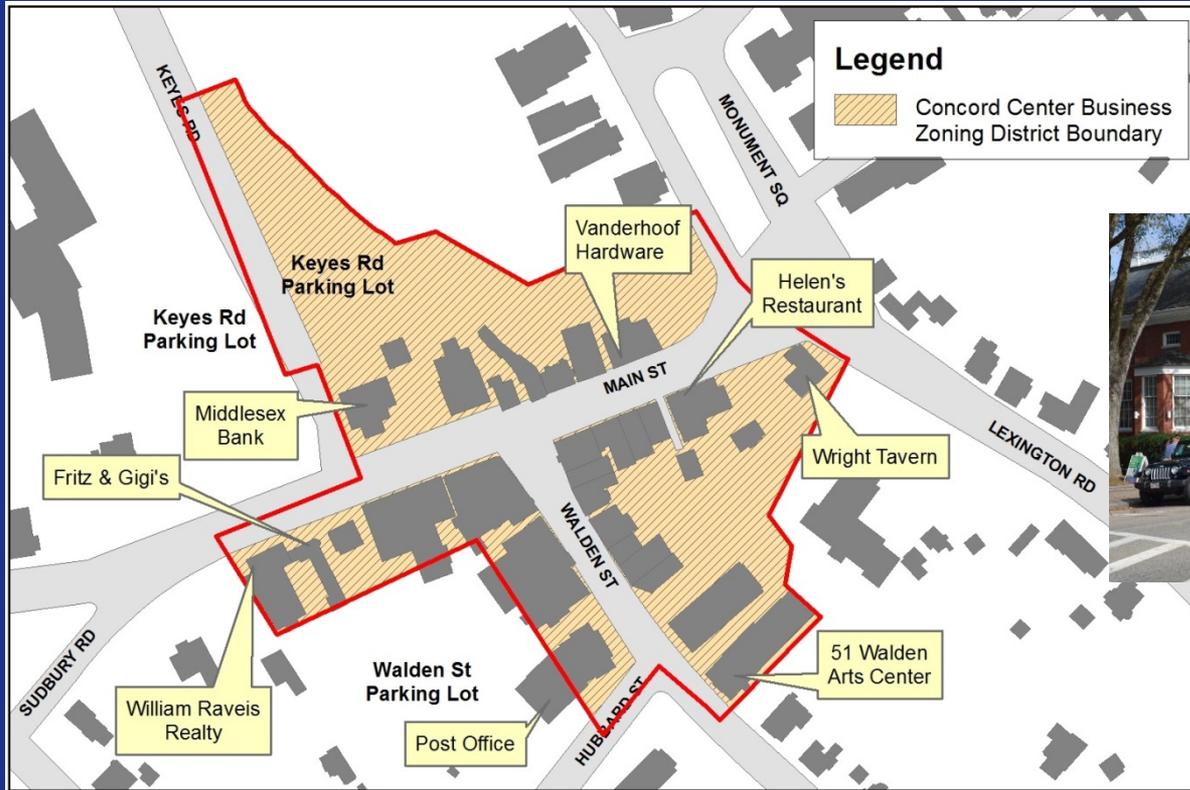
Proposed Amendment

Add to the Bylaw the Concord Center Business District, with a limit of 12 such businesses in Concord Center.

(The formula business definition and special permit process for establishing, expanding or relocating formula businesses remains the same.)

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Concord Center Business District



Definition of Formula Business

A type of business activity that maintains two or more of the following standardized features:

1. array of services and/or merchandise, or menu
2. trademark, logo, service mark or symbol
3. décor, architecture, layout or color scheme
4. uniforms
5. sign

and these features are substantially the same as 15 or more such establishments, regardless of ownership or location.

Concord Center Formula Businesses

- *Bank of America*
- *Barrett/Sotheby's*
- *Caffe Nero*
- *Cambridge Trust Company*
- *Coldwell Banker*
- *Engel & Volkers*
- *J McLaughlin*
- *Middlesex Savings Bank*
- *Sara Campbell*
- *William Raveis*

Total: 10 as of Jan 2019

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Purpose of the Bylaw

To preserve the existing character, diversity, variety and scale of the district, which is vital to the continuation of Concord's ability to attract both residents and visitors.

What's Special about Concord Center

Historic heart of the town

- Commercial and government center for the community
- Major tourist destination
- Design and form of a classic New England town center
- Located within three Historic Districts

Abundant cultural resources

- Galleries, bookshops, a theatre and other performance venues
- Fully contained within the Concord Center Cultural District, one of the first to be designated in Massachusetts

Action Recommended in 2018
Comprehensive Long Range Plan

“Adopt zoning and other alternatives to protect unique features of existing village centers (e.g., potential expansion of the existing formula business bylaw complemented by other fee/ incentives options).”

Section 4.4, Goal #1, Action #1

Why Replace All of Section 3.3?

Due to the number of edits required throughout this section of the Bylaw to refer to two zoning districts, the Bylaw is being replaced in its entirety for ease of reading.

The change in the text in the Motion is for clarification and a punctuation correction.



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Appendix

ADDITIONAL DETAILS

West Concord Formula Businesses

1. 7-11
2. 99 Restaurant
3. Bank of America ATM
4. Citgo Gas
5. Citizens Bank
6. Dunkin Donuts
7. Middlesex Savings Bank

Total: **7** as of January 2019

*Other businesses with more than one location:
Pet Source (6 locations in Massachusetts)*

Other Multi-location Concord Center Businesses

- *Brine's Sporting Goods – 2 locs*
- *Comella's - 13 locs*
- *Comina Furniture – 5 locs*
- *Fiorella's – 5 locs*
- *French Lessons Boutique – 4 locs*
- *Irresistibles – 11 locs*
- *Potpourri Designs – 4 locs*
- *Tess & Carlos – 3 locs*
- *Winston Flowers – 8 locs*

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How does the limit work?

When the # of formula businesses is equal to or greater than the limit, no new formula business may be established unless an existing formula business:

- 1) Closes
- 2) Adapts so that it no longer qualifies
- 3) Relocates outside the district

If an existing business grows to have more than 15 similar locations, it will:

- 1) Count toward the total number of formula businesses
- 2) Not be considered as a formula business being established

Special Permit Criteria

- (a) Preserves small-town character
- (b) Contributes to the diversity of uses
- (c) Avoids over-concentration of formula businesses in the immediate vicinity
- (d) Is compatible with the district's architecture / aesthetics
- (e) Does not adversely impact others via increased intensity of use
- (f) Is not a drive-through

Businesses Can Adapt to Avoid FBB Designation

3.3.5 Determination “A formula business may adapt its business activities in consultation with the Building Commissioner so that the proposed establishment no longer qualifies as a formula business...”

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Concord's Bylaw vs. Wellfleet's

Wellfleet Bylaw (invalidated)	Concord Bylaw
Defined formula businesses in terms of ownership	Defines formula business as 15 or more similar locations “regardless of ownership”
Did not treat all businesses uniformly	Applies to any business with features “the same as or substantially the same as” 15 or more such establishments
Did not provide clear special permit criteria	Provides guiding language about the type of character, diversity and architecture each business district seeks to maintain

Another Perspective

“Finally, district caps or bans like that imposed in Concord (as opposed to a townwide cap or ban) will be a closer call on judicial review. However, where a municipality has good reason to install the district cap or ban, such as the historic or cultural value of the district, the burden may be tolerated, particularly when the municipality offers valid opportunities to locate formula businesses in other districts.”

Mark Bobrowski, “The Regulation of Formula Businesses and the Dormant Commerce Clause Doctrine,” *The Urban Lawyer*, Vol. 44, No. 1 (Winter 2012), p. 263

Another Perspective (cont)

“The fight against formula businesses is a fight to preserve community character, architectural heritage, and neighborhood scale. It is, as Coronado's ordinance announced, a fight to preserve ‘a village atmosphere.’ These aesthetic goals should be taken seriously. When this article has failed to exalt such purposes, it has done so only to contrast the weight of impermissible economic motives. The use of the police power to make and maintain a vibrant community is an important step in assuring the public welfare.”

Mark Bobrowski, “The Regulation of Formula Businesses and the Dormant Commerce Clause Doctrine,” *The Urban Lawyer*, Vol. 44, No. 1 (Winter 2012), p. 264



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