

TOWNSHIP OF LOWER MERION

Building and Planning Committee

Issue Briefing

Topic: Zoning Code Amendment – Minor Zoning Code Edits

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Date: June 4, 2025

I. Action To Be Considered By The Board:

Authorize the Township Secretary to advertise a public hearing and notice of intent to adopt an Ordinance, to amend the Code of the Township of Lower Merion, Chapter 155, entitled Zoning for the following:

- Article II, Definitions, § 155-2.1, Definitions of Terms, to add the definitions for Food Hall, Hookah, Hookah Bar, Neighborhood Fulfillment and Distribution Center, Outdoor Temporary Sales Event, and Smoke Shop;
- Article III, General To Districts, § 155-3.5, Frontages, Subsection (D) and (F), to make edits to the frontage yards;
- Article V, Uses, Tables 5.1, Uses, and 5.3, Use Regulations, to permit Outdoor Temporary Sales Event as a regulated use in the VC, TC, NC, LI, RHR, BMV, and CAD Districts subject to certain standards to be provided for therein; and
- Article V, Uses, Tables 5.1, Uses, and 5.3, Use Regulations, to permit Neighborhood Fulfillment and Distribution Center and Food Hall as a regulated use in the VC, TC, LI, RHR, BMV, and CAD Districts subject to certain standards to be provided for therein; and
- Article V, Uses, Tables 5.1, Uses, and 5.3, Use Regulations, to permit Smoke Shop and Hookah Bars as a specialized retail use in the VC, TC, NC, LI, RHR, BMV, and CAD Districts subject to certain standards to be provided for therein; and
- Article VIII, Parking Standards, Table 8.1, Minimum Parking Requirements, to change the building area to floor area for the parking calculation.

II. Why This Issue Requires Board Consideration:

The Board of Commissioners approve all amendments to Township codes.

III. Current Policy Or Practice (If Applicable):

N/A

IV. Other Relevant Background Information:

It was anticipated that minor amendments would be required after the adoption of the new Zoning Code in 2020. Staff meets regularly with the Zoning Officer to review implementation of the Zoning Code and to address issues which require repeated variances or interpretations. The following group of Zoning Code edits are the seventh proposed set of edits since the February 26, 2020, adoption of the Zoning Code. The fifth round of edits was adopted in July of 2023 and the sixth round of edits was adopted in April of 2024.

There are several minor amendments suggested in this ordinance. Each proposed edit is summarized below:

1. **Article II: Amend the Definitions section** to add the definition for the following:

FOOD HALL

An indoor communal eating space in which curated, artisanal cuisines and dining experiences, prepared fresh to order by multiple vendors, are provided; distinct from food courts, which are typically found in shopping malls and feature fast-food chains offering quick, standardized meals.

HOOKAH

A substance typically smoked through a water pipe with a smoke chamber, a bowl, a pipe, and a hose, and also known as “narghile,” “argileh,” “shisha,” “hubble-bubble,” and “goza,” or any similar substance.

HOOKAH BAR

An establishment which is, whether as its primary use or as an accessory use, devoted to, marketed as, or designed for the on-premises use of hookah. The term “hookah bar” includes, but is not limited to, establishments variously known as “hookah parlors,” “hookah cafes,” and “hookah lounges.”

NEIGHBORHOOD FULFILLMENT AND DISTRIBUTION CENTER

A commercial use where prepared food, beverages, and convenience products are both sold at retail and also temporarily stored onsite until they are sorted, packaged, and delivered directly to surrounding neighborhood residential properties in response to orders placed in store or via an automated system which limits sales to available, on-site inventory.

OUTDOOR TEMPORARY SALES EVENT

The outdoor sale of temporary or seasonal merchandise for a limited period of time and which not require the construction or alteration of any permanent

structure and is also subordinate to the principal use of land or of a building on a lot customarily incidental thereto.

SMOKE SHOP

An establishment primarily engaged in or marketed as selling tobacco, tobacco products/accessories, and/or vaping products and accessories, including but not limited to a (1) retail sales or wholesale establishment which maintains 20% or more of its total merchandise as tobacco, tobacco products/accessories, and/or vaping products or accessories or (2) a retail or wholesale establishment which holds itself out as, or otherwise promotes or markets itself as, a "tobacco store," "smoke shop," "vape shop," "cigar shop," or other similar establishment.

- A. Examples of vaping products and accessories referred to herein shall include but not be limited to e-cigarette or vape cartridges or refills, vaporizers, vape pens, vapor products, hookah pens, electronic cigarettes, e-cigarettes, e-cigs, e-pipes, and any other electronic nicotine delivery system ("ENDS").
- B. Tobacco products and accessories as referred herein shall include but not limited to any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco, matches, lighters, grinders, hookahs, pipes, chewing tobacco, cigarette rolling machines or papers, ashtrays, pipe tools, pipe supplies and pipe accessories.

2. Specific Regulations for Added Definitions:

Defining and better regulating Fulfillment/Distribution/Delivery uses

Issue:

Home delivery of prepared food, groceries and personal items has been increasing over the past few years and has significantly increased since the Pandemic. Some of the increases in home delivery are from traditional take-out food locations or from brick-and-mortar restaurants. Many restaurants have been partnering with third party vendors, such as Uber Eats or Doordash to provide home delivery. Issues associated with increased restaurant take-out and home delivery activity generally revolve around short-term, on-street parking. Parking issues can be addressed via parking restrictions, parking enforcement or through the creation of short-term drop-off/pick-up parking zones.

Of greater concern is the trend of larger-scale neighborhood Fulfillment/Distribution Centers such as Go Puff or Wonder which deliver a variety of take out and packaged food. Neighborhood Fulfillment and Distribution Center typically locate in neighborhood retail districts close to their customer base. Neighborhood Fulfillment and Distribution Center's combine the business's retail functions and activities and its warehouse or distribution activities into one building. These new, smaller facilities provide customers with options

for viewing goods and placing orders online or onsite. Goods are stored and orders are processed onsite. Customers can have their orders delivered to them or to another facility or location, or they can pick up their orders onsite. Neighborhood Fulfillment and Distribution Center's differ from traditional take out uses in their scale and differ from traditional warehouses in that a warehouse stores inventory while Neighborhood Fulfillment and Distribution Centers are designed to enhance the customer experience around the process of ordering and having products delivered on time.

Neighborhood Fulfillment and Distribution Centers are an emerging type of retail/distribution use that are not well regulated by local Zoning Codes. Issues with these types of uses include:

- Replacement of commercial space intended to be used for active commercial with uses that do not contribute to commercial area vibrancy or overwhelm neighboring businesses. Neighborhood Fulfillment and Distribution Centers can present food and beverage or convenience store front where people off the street can access goods which are primarily intended for distribution by hired drivers for delivery. Distinguishing retail/convenience appearing uses from actual active uses is a challenge. Requiring that street level retail be provided to a certain depth and including design standards helps. Adding requirements increasing the number of on-site table and chairs is another potential solution.
- Parking/loading and queuing is another concern of these types of uses. These types of uses typically employ a fleet of independent delivery agents who drive in/fill up and drive off to deliver their goods. Ensuring that on the street or public parking is not compromised by delivery fleets needs to be addressed. Higher off-street parking requirements can address these concerns.

Proposed Amendments

- Define Neighborhood Fulfillment and Distribution Center and Food Halls to differentiate the uses from traditional restaurants, retail or warehousing and storage.
- Designating Neighborhood Fulfillment and Distribution Center and Food Halls as regulated uses (specialized retail) in the VC, TC, LI, RHR, BMV, CAD districts.
- Adding the following specific regulations for Neighborhood Fulfillment and Distribution Center:
 - Frontage on a Primary or Secondary Roadway
 - Must provide off-street parking of 5 spaces per 1,000 square feet
 - Require retail use along 80% of the primary front façade for a depth of 40'.
 - The retail portion of the business must be open to the public whenever the Fulfillment Center is operating.
- Adding the following specific regulations for Food Halls:
 - Frontage on a Primary or Secondary Roadway
 - Must provide off-street parking of 5 spaces per 1,000 square feet

Outdoor Temporary Sales Events- Better Regulate Location & Duration of Outdoor Temporary Sales

Issue

Outdoor Temporary Sales Event (OTS), such as Christmas Tree Sales, pop up sports merchandise sales and seasonal garden centers are becoming more frequent fixtures in shopping center parking lots. OTS are separate and distinct from outdoor accessory sales currently permitted with brick and motor stores that lease spaces at shopping centers. Brick and mortar stores are permitted to have outdoor dining and sidewalk displays as accessory uses. Traditionally OTS have only lasted for a few weeks, but in recent years they have become longer in duration and as a result have a greater visual and operational impact upon the shopping center.

Proposed Amendments

- Designating outdoor temporary sales as a regulated use in the NC,VC, TC, LI, RHR, BMV and CAD Districts; and
- Establishing specific parameters by which OTS may operate, including:
 - Limiting any OTS to a period of no more than 4 consecutive weeks.
 - Prohibiting more than 1 OTS from operating at the same time.
 - Limiting the number of OTS in a calendar year to 3.
 - Limiting the footprint of an OTS to 3,000 square feet.
 - Requiring that the applicant apply for a zoning permit to operate an OTS and shall prove to the Zoning Officer that adequate parking and traffic control will be available for both the OTS and any other use of the property. The Zoning Officer may place conditions upon the permit to address parking and traffic control
 - Requiring that an OTS be set back a minimum of 20' from a residential property and that operations be screened to the satisfaction of the Zoning Officer.
 - Requiring that trash and loading associated with the use be properly screened from a public view.
 - Limiting the hours of operation to no later than 10pm; and
 - Limiting signage to a single non illuminated sign no greater than 25 square feet.

Smoke Shops and Hookah Bar: Add Separation Requirements

Issue

The Township is experiencing an increasing number of smoke shops and hookah bars (smoke shops) operating in commercial districts. Smoke shops primarily sell tobacco and drug paraphernalia but may also sell snacks and soft drinks. To purchase tobacco, customers must be over 21 years of age. Because they sell tobacco Smoke Shops must be licensed by the State. Smoke Shops are currently regulated as a retail use under the Township's Zoning Code, like a newsstand, pharmacy or liquor store.

Because of their association with regulated substances, Smoke Shops are often perceived as having a negative impact on commercial districts. The negative perception associated with

Smoke Shops may discourage investment in commercial districts and is contrary to the Township's economic development goals of creating vibrant, diverse commercial areas.

Smoke Shops are notorious for garish signage and lighting, which are often in conflict with Township codes. Enforcement of Smoke Shop code compliance is an ongoing challenge for staff. With that said, it is important to realize that existing uses would be grandfathered in and these separation requirements would not apply to existing smoke shops and hookah bars, only new uses with the separation requirements.

Proposed Amendments

- Defining Smoke Shops and Hookah Bars to differentiate them from other retail uses.
- Designating Smoke Shops as a regulated use (specialized retail) in the NC, VC, TC, LI, RHR, BMV, CAD districts.
- Adding separation requirements of 1 minimum distance of 1000' between establishments.
- Adding that alcoholic beverages may not be brought onto the premises for on-premises consumption and the sale and service of alcohol shall comply with all federal, commonwealth, and local laws.
- The use shall provide adequate ventilation such that the ventilation, at a minimum, must prevent smoke and vapors from migrating into adjacent buildings and/or suites and to outdoor public areas. A mechanical exhaust hood system shall be required if an establishment heats coals indoors.
- The uses shall comply with current Federal, Commonwealth, and local laws including, but not limited to the Clean Indoor Air Act.

3. Frontage Yards: Permitting Accessory Structures in Secondary Frontage Yards

Issue:

Most single-family homes in the Township front onto a public street and back up onto another residential property. These properties customarily have front, rear and side yard setback zoning provisions regulating what structures and improvements can occupy which setback. The Township's zoning includes specific frontage provisions prohibiting structures in the front yard setback between the house and the street. The zoning code also regulates materials and heights of fencing in the front yard setback, with the intent of creating open views between the streetscape and the front of residences.

The Township has a number of properties that front on two streets. Some of these properties are corner properties and the zoning code includes specific regulations to address these instances. However, not all properties with two street frontages are corner properties. The zoning code distinguishes between corner properties and Secondary Frontage lots (SF lots) in which the rear of the lot backs up to (or fronts) a street.

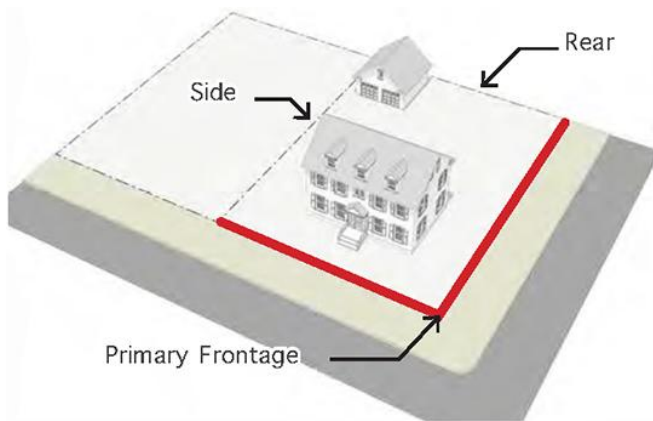
Secondary Frontage lots (SF lots) back up to a public street and not another property. In some instances, SF lots have turned their back on the 2nd street with landscaping and fencing (an example of this is along the east side Lancaster Avenue between St. Charles and the shopping Wynnewood Center). In many instances, SF lots are open on both streets that they front.

SF lots have two front yards instead of a front yard and a rear yard. Because SF lots don't have rear yards, they are extremely limited in where they can place accessory structures, like pools and sheds, which would customarily be located in the rear yard. Pools and sheds are not normally located in front yards. We have seen several appeals to the ZHB from homeowners looking to install pools and sheds on SF Lots. This proposed amendment addresses this issue.

The current Zoning Code requires accessory structures to be placed behind the principal dwelling. A secondary frontage lot has two frontages and no rear setback; therefore, an accessory structure is not permitted.

Proposed Amendment

Permit secondary frontage lots to install an accessory structure within the building envelope of the secondary frontage, which is the area that does not have the vehicular access, typically the area that is used as a back yard for the dwelling. The structure would be required to meet the underlying front and side setbacks and not permitted to utilize the accessory structure setbacks, since there is street frontage in this area.



The current code allows for an accessory structure on corner lots.



The proposed amendment would allow for an accessory structure within the red area of the secondary frontage.

The Zoning Officer has seen several Zoning Hearing Board requests for relief from the primary frontage requirements, when it is a secondary frontage. The Board has not approved any exceptions to date. Staff would like to allow for the proposed flexibility for this code section to give homeowners additional options with their properties.

4. Clarifying how required off street parking is calculated in non-residential districts

Issue:

The Zoning officer has recently been challenged regarding how the Zoning Code determines the number of off-street parking spaces for non-residential uses. The code currently requires a certain number of parking spaces per 1,000 square feet for non-residential uses. The code notes that “square feet” refers to building area devoted to a particular use. The definition ‘building area’ essentially defines building area as the building footprint, which is fine for one story buildings, but fails to require off-street parking for multi-story buildings.

Proposed Amendment:

Revise the Minimum Parking Requirement note in the Zoning Code to state that square feet refer to the Floor Area devoted to the use, rather than Building Area devoted to the use.

Standards for Text or Rezoning Amendments

Staff believes the proposed amendments satisfy the standards for a zoning code amendment and recommend the adoption of the proposed ordinance. In anticipation of consideration for the proposed amendments, staff would like to draw attention to the standards for text or rezoning amendments, which are included in the Zoning Code:

§ 155-11.3.E.(2) Standards for text or rezoning amendments. In deciding whether to adopt or deny any proposed amendment, or to adopt some modification of the Planning Commission's recommendation, the Board of Commissioners shall consider, among other factors, the following:

- (a) Whether the proposed amendment is consistent with the goals, objectives, and policies of the Comprehensive Plan, as adopted and amended from time to time;
- (b) Whether the proposed amendment is compatible with current and projected conditions and the overall character of development in the immediate vicinity of the subject property;
- (c) Whether the proposed amendment is the most desirable use for which the land in the subject property is adapted; and
- (d) Whether the proposed amendment will have an adverse effect on the value of properties throughout the jurisdiction.

V. Impact On Township Finances:

There is no impact on Township Finances

VI. Staff Recommendation:

Staff recommends advertisement of the code amendments.