

**MarketStreet Advisory Committee (MSAC)**

**Meeting Minutes**

**May 10, 2018**

**7:00 p.m. – 8:45 p.m.**

**Merritt Room, 600 MarketStreet**

**Attendance: J. Bayer, P. Parziale, S. Yerardi, A. Ferullo,**

**W. McKenzie, A. Mitchell, G. Covino, J. Gioioso, B. Charville, P. Doucette, D. Breen,**

**R. Dalton, J. Fleming**

**Absent: T. McClory**

**Guests: T. Tye ND, D. Straus WS, K. Weatherbee WS, C. Barrows WS,**

**R. Hart VHB, K. Keene VHB**

RECEIVED

2018 MAY 25 A 9:20

TOWN CLERKS OFFICE  
LYNNFIELD, MA

1. Chairperson Bayer, calls meeting to order
2. Agenda review, meeting goals and expectations
3. Vote on minutes from April 26, 2018 meeting;
  - a. Voted and passed
4. National Development (T. Tye) follow-up on outstanding questions relative to public safety, zoning and design:
  - a. T. Tye: Design standards reviewed including roof profiles, materials and colors
  - b. Zoning: Spot zoning was explained. A detailed legal memo from Attorney Fishman was distributed to the committee explaining why the theater does not require spot zoning.
5. Theater Topic – **Public Safety**
  - a. National Development speaks to Public Safety;
    - i. Public safety response to Chief D. Breen: Alcohol policy, don't have firm answers at this point. Would like to meet with the chief. Dedham and Chestnut Hill reported no safety issues. Leaving it to the chief to report.
  - b. Chief Breen has opportunity to share discovery relative to Public Safety
    - i. Discussions with police chiefs that have similar theaters, calls for service not a tremendous amount of concern, mostly medical aid. No negative deterrent for the theater itself.
6. Theater Topic – **Traffic**
  - a. National Development & VHB present information on Traffic
    - i. Traffic study was distributed (see attached)
    - ii. Studied 9 intersections
    - iii. Studied 7 years out
    - iv. Trip generation: office vs. theater, not a major difference in count
    - v. Traffic will increase very little
    - vi. ND will fund the adaptive signal system at 3 intersections if theater passes.

Technology has changed dramatically for light signals since MarketStreet inception.

      1. P. Doucette: A theater vs. an office building will only generate a minimal increase?
      2. G. Covino: Is there potential for Waze/Google etc. to direct traffic more efficiently?
      3. D. Breen: Agree with adaptive systems on lower volume hours but at higher volume times traffic can't move when congested.
        - a. Randy Hart: When congested, the system gives priority to safety.

- b. D. Breen: Widening roadway off 95S would improve safety with back-up on the ramp. Cannot take a right turn causing back-up.
- c. W. McKenzie: Level of service A-F, existing and future builds, what is level?
  - i. Randy Hart: B to C under build conditions, then D to D. Although adaptive lighting will improve this. Shouldn't hit all 3 lights with adaptive lighting unless congested.
- d. W. McKenzie: Whole foods delivering amazon, any model for that?
  - i. Randy Hart: Theoretically should decrease since one vehicle making multiple deliveries, cutting back on visits to the location.
- e. J. Gioioso: Comments on the traffic presentation, people sitting in traffic and parking situation, work with chief and widen roads/put in adaptive lighting to prepare for theater to show public less impact.
- f. D. Breen: How many dates did you do a traffic count?
  - i. Randy Hart: One weekday and one Saturday. This is protocol.
  - ii. D. Breen: How many vehicles were counted?
    - 1. Randy Hart: Will send info to you.
- g. G. Covino: Is town responsible for any maintenance on lighting?
  - i. Randy Hart: No, this is DOT responsibility
- h. B. Charville: Approx. cost to widen the road?
  - i. Randy Hart: Would need to know what is underground, i.e. pipes, sewer etc. to determine an estimate.
- i. A. Mitchell: What are the dates for the count in November?
  - i. Randy Hart: Thursday Nov. 2, 2017 and Saturday Nov. 4, 2017

## 7. Public Comment on Public Safety and Traffic

## 8. Update on Berm;

- a. National Development followed through with planting 25 trees in spring 2017 to replace trees that did not survive. Arborist chose varieties more tolerable to draught and wind conditions.
  - i. W. McKenzie.: Design standards state that 50% of evergreen trees shall be 10' in height and these are only 7'
  - ii. B. Charville.: We can follow up with Doug Straus
  - iii. P. Parziale: Perhaps the expertise of the arborist suggested best size for survival, strength for growth.

## 9. Advisement framework;

- a. Chairperson Bayer: We will put together a binder with the full scope of the MSAC work.
  - i. Chairperson Bayer will develop the full document based on the work of the sub-committees (see attached MSAC Advisement Summary Framework outline)
    - 1. Regarding the theater: Will need assistance drafting the advisement. Will assign 2-3 members to draft. Once drafted it will be presented to the committee-at-large to discuss and amend as needed.
    - 2. Once discussed, amended if needed, the committee will vote on the document and it will be added to the binder for the BOS review.
  - ii. A. Mitchell: Part of the advisement should be from the public. Should be a separate sub-topic, theater as a general idea, what do abutters say about this? What is our end goal? A consensus? Maybe not enough info?
    - 1. J. Gioioso: Not enough public comment? Recommend to selectmen pro/con, vote to support theater or not?

- a. P. Parziale: My understanding from the beginning is that the MSAC is to fact find and present the facts. Not a vote or pro/con reco.
- b. D. Dalton: That is correct, MSAC is to come back with findings and advisements. I.e. The committee may not make a reco due to no consensus, more importantly the town will be informed with the findings communicated. Don't get hung up at this point, the outline (MSAC Advisement Summary) presented by Chairperson Bayer is very thorough. A major part of the MSAC was to open dialog with the town and National Development.
- c. G. Covino: To the extent we keep it to fact finding is preferred. At the end of the day it is the will of the people that will decide. Our committee is more about information, facts and data, not decisions.
- d. A. Mitchell: All other sub-committees made recos
- e. J. Gioioso: Unsure of the governance, can we make a motion on A. Mitchell's 3 items?
- f. A. Mitchell: Would like a sub-topic of abutter input. Not necessary to make a motion on 3 items.
- g. G. Covino: What defines an abutter? It is important to capture all taxpayer feedback.
- h. G. Covino: If we have a public comment period, shame on us if it is not captured.
- i. J. Fleming: The MSAC has a resident feedback document we have been recording and addressing for months. Both from public comments at the MSAC meetings as well as residents that have entered concerns on-line.
- j. D. Breen: Not sure we need to get too deep into public comment, not to dismiss the comments but it can be included in sub-committee reports.
- iii. W. McKenzie: Amend the document (MSAC Advisement summary) to include a 9<sup>th</sup> bullet for abutter public comment and comments from 5/24 meeting.
  - 1. J. Fleming: We already have a dedicated document with detailed resident feedback. No need for an amendment.
  - 2. D. Breen: How do we define abutter?
  - 3. D. Dalton: We are going around in circles here. Public comment is public comment. It doesn't matter if abutter or other.
- iv. Chairperson Bayer re-read the revised proposed amendment from W. McKenzie to add a 9<sup>th</sup> bullet for public comment.
  - 1. Moved and seconded to approve the MSAC Advisement Summary Framework document as presented by Chairperson Bayer with amendment to add a 9<sup>th</sup> bullet for public comment.

#### 10. Expectations for next meeting on Thursday May 24, 7pm, Al Merritt Room, 600 Market Street

- a. Parking sub-committee presentation
- b. Public invited to provide feedback on potential proposal for a theater.

#### 11. Public Comment

- a. D. Basile 15 Fernway: What does the tenant want for a theater? Went to Dedham, represents more of what is here. Public wouldn't notice change in traffic comment, I change my drive pattern. Hopefully you can improve this. A one day study lacks what we live with, show us better results. The physics of the roadway didn't change much, we've taken away the idea of two active methods of access and egress. What about accidents not reported? At this point

there is no way I can tell my neighbors to put anything here without anticipated traffic from Lahey. Pipe has not changed, volume has increased significantly.

- b. D. Miller: We can never go wrong with public comment. Traffic studies never worked out. A one day sample is not appropriate. What happens if Netflix wins?
- c. Ellen Crawford 16 Durham Dr.: I am not an abutter but a huge supporter of MktSt and want to see it remain viable. A limited amount of residents show up to comment, how will this be presented to the BOS? Also traffic is everywhere now, Main St. is horrible at certain hours of everyday but that is not discussed.

12. Adjourn





Robert A. Fishman

Direct Line: (617) 439-2204

Fax: (617) 310-9204

E-mail: rfishman@nutter.com

MEMORANDUM

May 1, 2018  
11878-462

**TO:** Ted Tye, National Development

**FROM:** Robert A. Fishman, Esq. *RAF*

**RE:** Proposed Zoning Amendment to Allow a Traditional Neighborhood Theater to be Located in a Particular Portion of the Traditional Neighborhood Village Sub-District

---

You have asked me to consider whether the proposed zoning amendment presently being reviewed by the MarketStreet Advisory Committee would be considered illegal "spot zoning".

For the reasons describe below, the pending zoning amendment definitely is not spot zoning.

The proposed amendment would (1) create a new definition of Traditional Neighborhood Theater, (2) establish parking and height requirements for such a use, and (3) designate on a plan (which would be part of the amendment) the specific location within the Traditional Neighborhood Village Sub-District for this new use.

Further, although structured parking is permitted in the Traditional Neighborhood Village Sub-District, in response to some visual concerns expressed by nearby residential areas outside of said Sub-district, the same plan described above also would establish the location for a garage near the theater, further away from such residential areas. Sections 9.5.7.12 and 9.5.7.13 of the Zoning Bylaw will also require approval by the Planning Board of the garage design, location and capacity.

The proposed amendment would not establish a new zoning district. Rather, the amendment simply would add a new permitted use within the Traditional Neighborhood Village Sub-District. More detailed plans for the proposed structures (both theater and garage) still would be required to comply with the Design Standards under Section 9.5.9 of the Zoning Bylaw and undergo Site Plan Review by the Planning Board under Section 9.5.12 of the Zoning Bylaw.

As defined by a long line of cases and settled law, spot zoning only occurs when there is a "singling out of one lot for different treatment from that accorded to similar surrounding land indistinguishable from it in character, [and] all for the economic benefit of the owner of that lot". *Board of Appeals v. Housing Appeals Comm.*, 363 Mass. 339, 361-62 (1973).

If there is any public benefit, a rezoning cannot be spot zoning even if a private landowner will derive some benefit. *Lanner v. Board of Appeal*, 348 Mass. 220, 229-30 (1964); *Rando v. Town of North Attleborough*, 44 Mass. App. Ct. 603, 606 (1998); and *W.R. Grace & Co. v. Cambridge City Council*, 56 Mass. App. Ct. 559, 571 (2002).

Section 9.5.1. Purposes of the Zoning Bylaw, which established the Chapter 40R overlay district in 2007, has a long list of public benefits created by the district including, without limitation, "(a) [implementing] the objectives of the Lynnfield Master Plan (2002), which identified the area within the PVDD for mixed-use development", and (f) "[generating] positive tax revenue, and to benefit from the financial incentives provided by Gen. Laws. Ch. 40R, while providing the opportunity for new business growth and additional local jobs".

Since the proposed amendment would accomplish some of the public benefits under Section 9.5.1, the proposed amendment does not constitute spot zoning.

Further, in the present case, a new zoning district is not being created for the land in question. All of the land within the MarketStreet project remains in the Traditional Neighborhood Village Sub-District. All of the land is owned by a single landowner.

The proposed amendment is no different than a situation in which, for example, the Table of Uses for a downtown business district might be amended to permit some new use within that district, for example a yoga studio or health spa. That very common type of zoning change is not spot zoning. Again, illegal spot zoning occurs only when land owned by a particular land owner, indistinguishable from other land within the same zoning district, is singled out for different treatment by the establishment of a new zoning district (for example, from residential to business) or by the expansion of an existing zoning district to allow previously residential property to be zoned for commercial use. See, for example, *Mitchell v. Board of Selectmen*, 346 Mass. 158, 161 (1963) (turning residentially zoned parcel into business district was spot zoning); *Schertzer v. City of Somerville*, 345 Mass. 747, 751-52 (1963) (amendment invalid that re-zoned parcel from business to residential); *McHugh v. Board of Zoning Adjustment*, 336 Mass. 682 (1958) (amendment invalid that converted residentially zoned land into business zoned); and *National Amusements, Inc. v. City of Boston*, 29 Mass. App. Ct. 305, 309 (1990) (amendment invalid that changed parcel from business use to multi-family residential when surrounding land was commercial use).

Unlike the foregoing cases, the proposed zoning change here is evolutionary in nature, allowing an additional use within the Traditional Neighborhood Village Sub-District which will be consistent with, and complimentary to, the existing retail, restaurant and recreational uses within the Sub-district. See *Van Renselaar v. City of Springfield*, 58 Mass. App. Ct. 104, 109 (2003) (no spot zoning where neighboring land was zoned or used for commercial or business uses and zoning change was harmonious with surrounding allowed or existing uses).

In summary, the proposed amendment is valid since it: (1) creates public benefits as set forth in Section 9.5.1 of the Zoning Bylaw, and (2) does not single out one parcel of land indistinguishable from it in character for treatment differently from other land in the same zoning district.

RAF:cnb

# MarketStreet Advisory Committee Updates

May 10, 2018



# Agenda

Industry info

Zoning – “Spot Zoning” question

Massing and Design

Public Safety

# 1. Industry Info – additional articles on “how the theater industry has reinvented itself”



## 2. Zoning - Response to Question on "Spot Zoning"

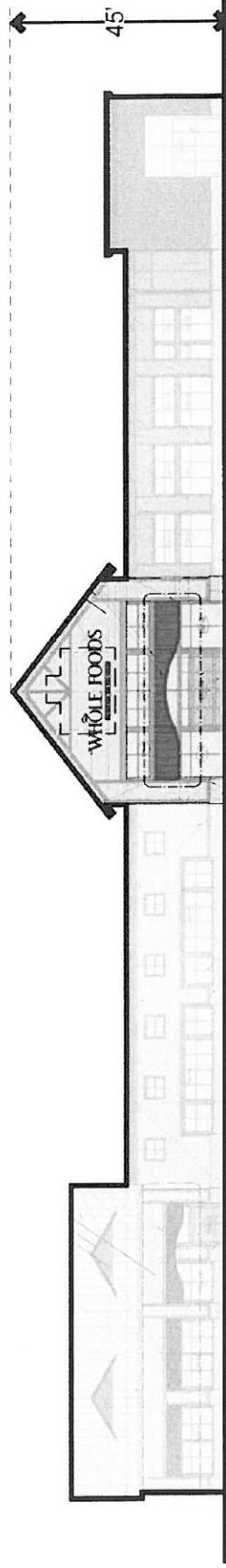
*"Spot zoning only occurs when there is a 'singling out of one lot for different treatment from that accorded to similar surrounding land indistinguishable from it in character, [and] all for the economic benefit of the owner of the lot.'"*

*"If there is any public benefit, a rezoning cannot be spot zoning even if a private landowner will derive some benefit."*

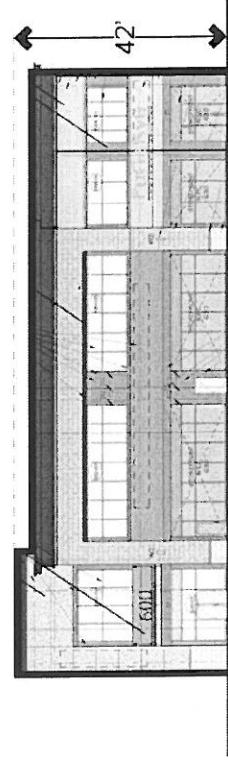
### 3. Design – Further Detail on Conceptual Massing



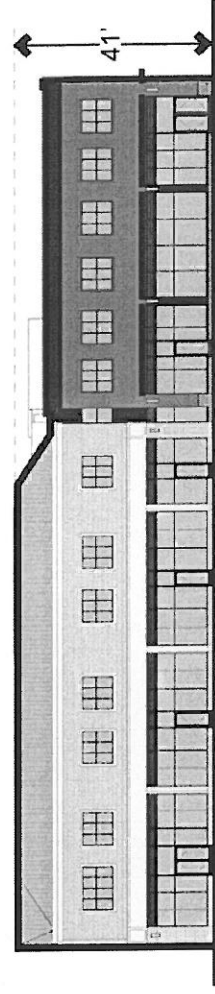




Building 100 WholeFoods Elevation



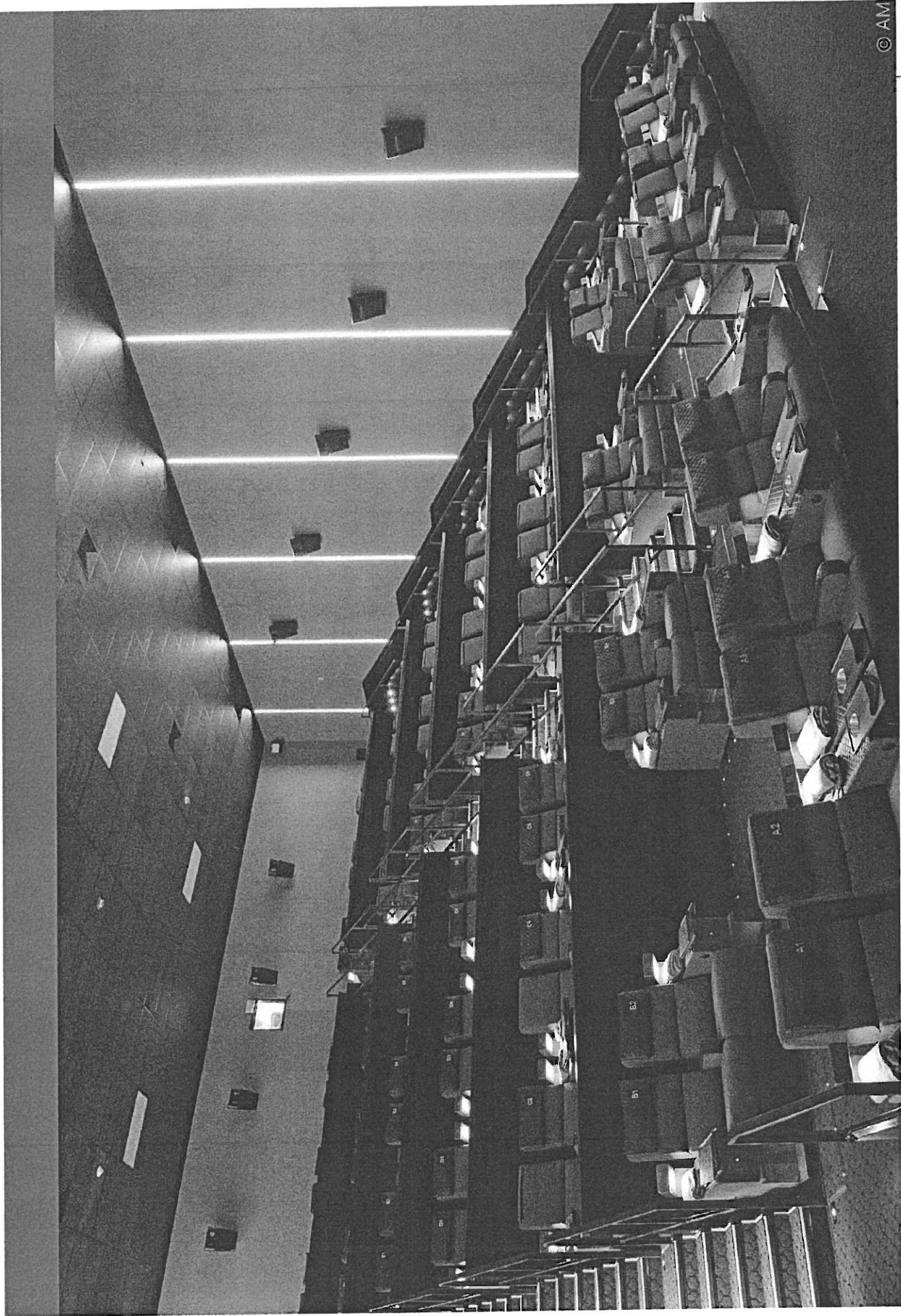
Building 600 FuGaKyu Elevation



Building 1350 South Elevation







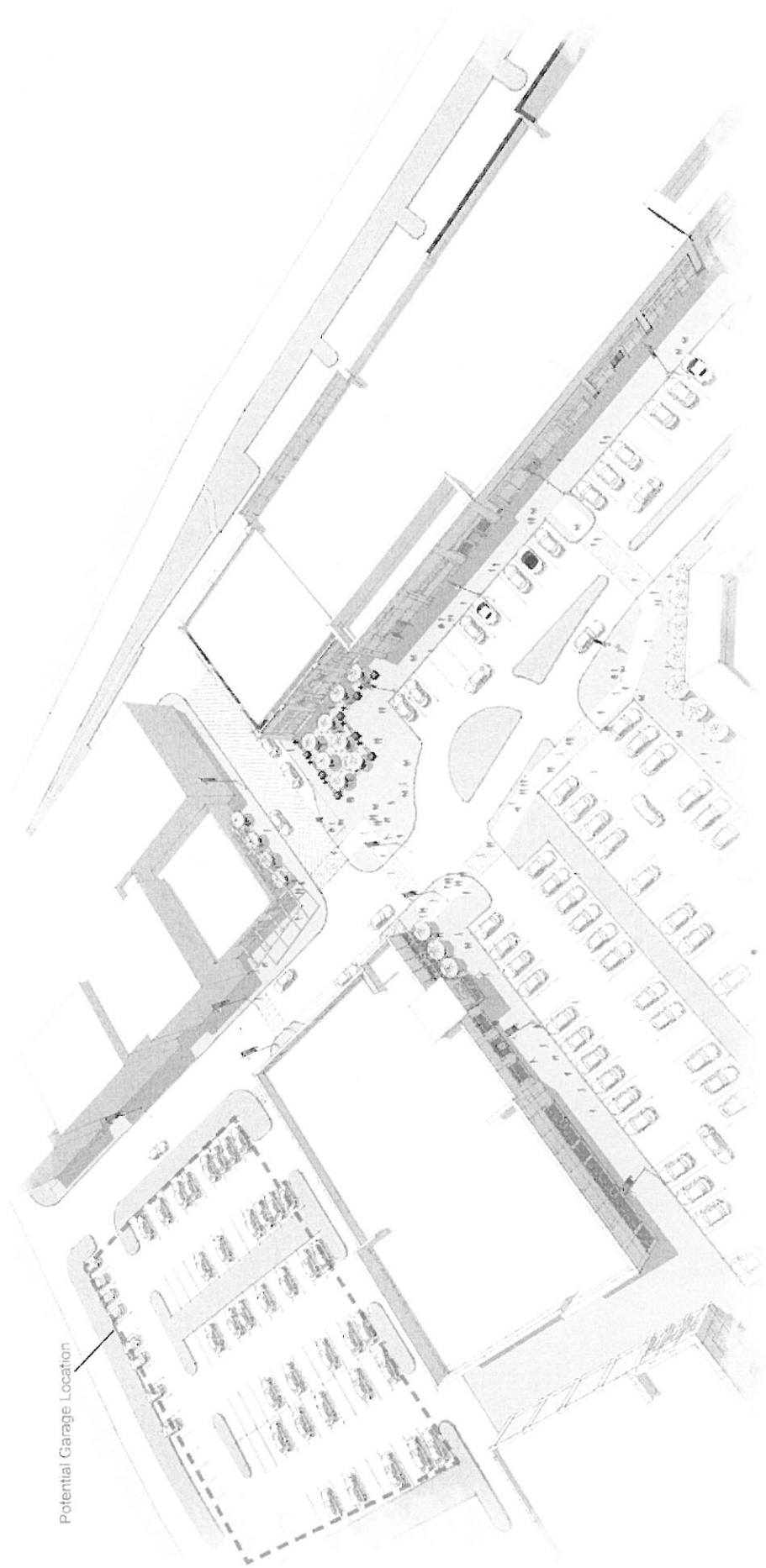
© AM

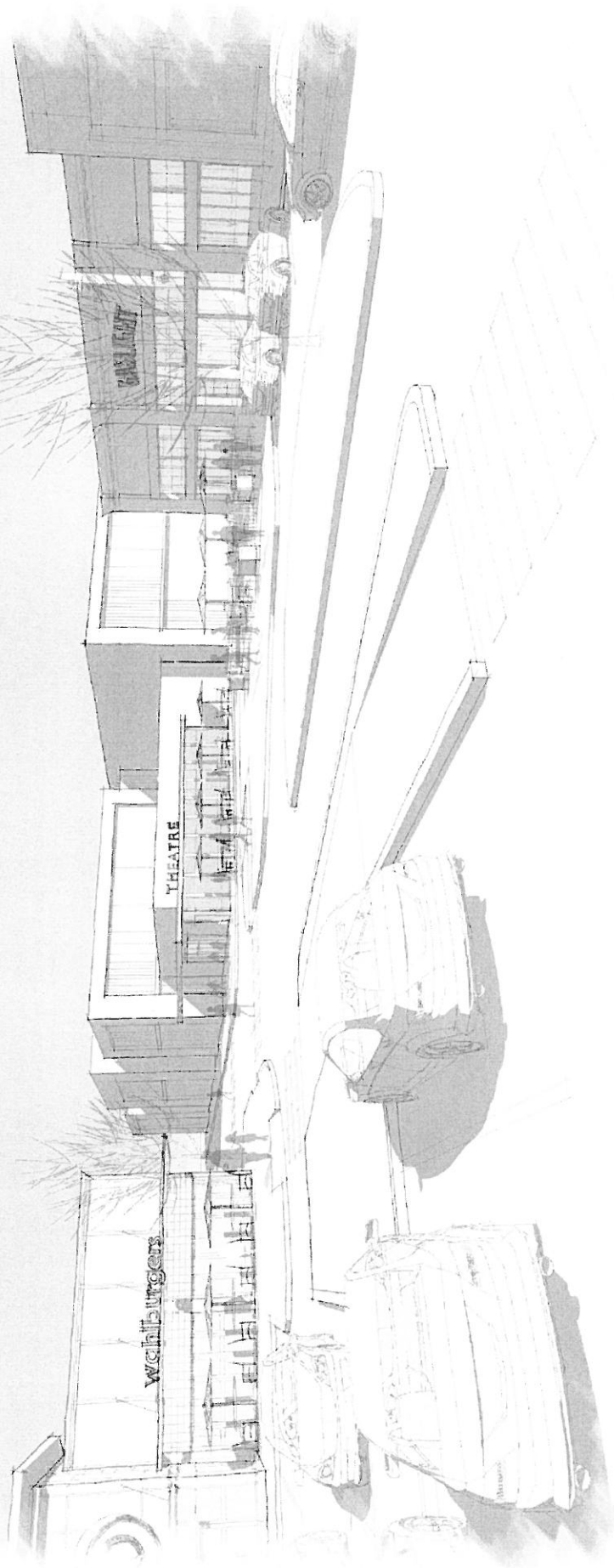
10

MARKETSTREET LYNNFIELD  
600 MARKET STREET | LYNNFIELD, MA 01940

APRIL 24, 2018  
CREATED BY: XF

WS | STUDIO







# Design Standards – Scale and Proportions

- Front setback line is encouraged to keep a consistent “street wall.”
- Building facades more than 50 feet wide shall be broken down into a series of smaller elements.
- Two story building design shall maintain the distinction between upper and lower floors.

## Design Standards – Building Facades

- Projecting bays, columns, recessed balconies, and roof shape variation should be utilized.
- Side and rear facades may be less detailed than the primary façade but shall be generally consistent with the primary façade's architectural style.



# Design Standards – Roof Profiles

- Shall employ varied vertical and horizontal planes for visual relief to the tops of buildings. Design elements such as parapets, cornices, towers and piers may also be used to break up the horizontal massing.
- HVAC equipment shall be screened.
- Buildings shall, when considered in relation to adjacent structures, incorporate a diversity of roof heights, gable orientations, and volumes.

# Design Standards – Materials and Color

- Building façade materials including but not limited to brick, wood, cementitious fiber board, manufactured limestone, cast stone, masonry, stone, glass, terra cotta, cellular PVC, trim, tile and sustainable materials are permitted.
- The use of exterior insulation finishing system (EIFS)... is prohibited below eight (8) feet above finish floor.
- A combination of materials should be used within a building.



## 4. Public Safety

Response to Chief Breen's questions on alcohol policy.

# MarketStreet Advisory Committee Updates

May 10, 2018

## **SECTION 1: MSAC Overview**

- Compliance with State and Local Law
- Mission
- Roles and Responsibilities
- Process

## **SECTION 2: MarketStreet-related Concerns & MSAC Advisement**

### **Berm Improvement and Compliance**

- Concerns
- Findings
- Conclusions & Recommendations

### **Noise Management Improvement**

- Concerns
- Findings
- Conclusions & Recommendations

### **Financial Impact**

- Concerns
- Findings
- Conclusions & Recommendations

### **Traffic Improvement**

- Concerns
- Findings
- Conclusions & Recommendations

### **Updating on the Development of Building 1350**

- Concerns
- Findings
- Conclusions & Recommendations

### **Parking**

- Concerns
- Findings
- Conclusions & Recommendations



## Potential Theater Proposal

- Questions/Concerns
  - Language to change zoning by-law
    - Questions & Concerns
    - Findings
    - Conclusions & Recommendations (drafted by BC & AM)
  - Traffic
    - Questions & Concerns
    - Findings
    - Conclusions & Recommendations (drafted by DB & JF)
  - Parking
    - Questions & Concerns
    - Findings
    - Conclusions & Recommendations (drafted by SY & TF)
  - Parking Structure
    - Questions & Concerns
    - Findings
    - Conclusions & Recommendations (drafted by SY & TF)
  - Experience
    - Questions & Concerns
    - Findings
    - Conclusions & Recommendations (drafted by PP & TM)
  - Fiscal Impact and Viability
    - Questions & Concerns
    - Findings
    - Conclusions & Recommendations (drafted by GC, WM, PD)
  - Building Design & Noise
    - Questions & Concerns
    - Findings
    - Conclusions & Recommendations (drafted by BC & JG)
  - Public Safety
    - Questions & Concerns
    - Findings
    - Conclusions & Recommendations (drafted by DB & JF)