

Ad to run 4/10 and 4/17

**TOWN OF LEESBURG  
NOTICE OF PUBLIC HEARING  
TO CONSIDER AMENDMENTS TO ZONING ORDINANCE  
ARTICLES 9 AND 18 TO ADD USES IN A NEIGHBORHOOD  
RETAIL CONVENIENCE CENTER IN A  
PRN - PLANNED RESIDENTIAL NEIGHBORHOOD**

The **LEESBURG TOWN COUNCIL** will hold a public hearing on **TUESDAY, April 23, 2013 at 7:30 p.m.** in the Town Council Chambers, 25 West Market Street, Leesburg, Virginia, 20176 to consider the following amendments to the Zoning Ordinance:

1. Sec. 9.3.16 Neighborhood Retail Convenience Center to establish new uses and use standards for such uses permissible within a Neighborhood Retail Convenience Center.
2. To reestablish Sec. 18.1.113 Neighborhood Retail Commercial as Neighborhood Retail Convenience Center creating a definition pertaining thereto.

Copies and additional information regarding each of these proposed Zoning Ordinance amendments is available at the Department of Planning and Zoning located on the second floor of the Leesburg Town Hall, 25 West Market Street, Leesburg, Virginia 20176 during normal business hours (Monday-Friday, 8:30 a.m. to 5:00 p.m.), or by calling 703-771-2765 and asking for Christopher Murphy, Zoning Administrator. This zoning ordinance amendment application is identified as case number TLOA-2013-0001.

At this hearing all persons desiring to express their views concerning these matters will be heard. Persons requiring special accommodations should contact the Clerk of Council at (703) 771-2733, three days in advance of the meeting. For TTY/TDD service, use the Virginia Relay Center by dialing 711.



**Date of Council Meeting:** April 23, 2013

**TOWN OF LEESBURG  
TOWN COUNCIL  
PUBLIC HEARING**

**Subject:** TLOA-2013-0001 Neighborhood Retail Convenience Center in the PRN (Planned Residential Neighborhood) District zoning text amendment

**Staff Contact:** Christopher Murphy, AICP, Zoning Administrator

**Recommendation:** Approval of the Zoning Ordinance text amendment as recommended by the Planning Commission and as presented in this report.

**Issue:** Should the Zoning Ordinance be amended to add new uses that are permissible as part of a Neighborhood Retail Convenience Center in a PRN District? Should the definition for Neighborhood Retail Convenience Center be amended to better clarify what uses are intended in the center?

**Fiscal Analysis:** No specific fiscal analysis has been done as part of this proposed zoning ordinance amendment. Though, it stands to reason that by expanding the permissible uses within a Neighborhood Retail Convenience Center that such a center will become more commercially viable and able to generate additional revenues to the Town through taxes such as BPOL and meals taxes.

**Planning Commission Post Public Hearing and Recommendation:** Following up on the discussion from the public hearing on March 21, 2013, the Commission focused its discussion at the April 4, 2013 Post Public Hearing on three specific concerns regarding the proposed amendment: 1.) creating a consistent use list, 2.) establishing a measurable standard for those uses that allows for a viable center while, 3.) maintaining compatibility of a Neighborhood Retail Convenience Center (NRCC) with surrounding residential neighborhood.

Additionally, the Commission wanted to provide the opportunity for staff to work with the owner of the Exeter NRCC to examine revisions to the proposed amendment based on the owner's email of March 20, 2013. (ATTACHMENT 1)

**Maintaining Neighborhood Scale:** Staff had originally presented a draft of the proposed amendments to Section 9.3.16 that established specific square foot maximums for certain uses, but not all permissible uses in a NRCC. The Planning Commission expressed concern that having use limitations on some uses meant those not so limited could occupy an entire center. A single use or business occupying up to 40,000 square feet is more appropriate in a B-2 or B-3 district and not in a NRCC since a use that size is not compatible with surrounding residential

neighborhood uses and is more suitable for a regional retail center. In order to address the Commission's concern, staff suggested that a maximum square footage limitation be applied to any single user in a NRCC. Staff originally proposed that maximum be 15,000 square feet.

Wanting to preserve the "neighborhood scale" of a NRCC through reinforcing the intent of NRCCs to be comprised of a collection of uses versus one single large user, the Commission recommended the 15,000 square foot maximum be reduced to 12,000 square feet. This change assures, in the case of the Exeter NRCC and/or any future NRCCs, there will be multiple neighborhood scale uses, versus a single-user "big box" style.

Exeter Center Owner Communication: During the March 21<sup>st</sup> public hearing, staff acknowledged receipt of an email with attachments from the representatives of the Exeter NRCC dated March 20, 2013 that due to the late submission date neither staff, nor the Planning Commission, had the opportunity to thoroughly analyze the proposed amendment as drafted by the owners of the Exeter NRCC prior to the public hearing.

The Exeter owners' email expressed concern with the amendment as drafted stating the proposed changes would: 1.) use undefined terms for uses that would create ambiguity in determining what is permissible within a NRCC, and 2.) place size limitations on already permissible uses that currently have no such limitations. The Exeter owners argued that these changes would transfer to staff the responsibility resulting in the potential for subjective determinations as to whether individual tenants sufficiently qualify as a NRCC use. The representatives of the Exeter NRCC owners met with staff on March 25, 2013. The amendments provided in the April 4 Planning Commission Post Public Hearing Report were drafted as a result of that meeting.

Refining Uses Permissible in a NRCC: A new list of uses was presented to the Commission in the April 4<sup>th</sup> staff report that is more definitive as to what uses are permitted as well as those that are not permitted in an NRCC. The uses included in the list are based on defined terms already existing in the Leesburg Zoning Ordinance.

Of the uses provided in the proposed ordinance, the Commission expressed its desire to have the use "financial office" removed. The stated intent of this change is to assure NRCC will not be available for pay day or car title loan type establishments.

The Commission asked why it was necessary to provide a list of unpermitted uses. Staff responded the intent is to provide clarity for owners of NRCCs concerning what is and what is not allowed. In addition, such lists minimize or eliminate altogether zoning determinations focused on permissible uses in a NRCC.

Exeter HOA Communication: Mr. Sandy Grossman from the Exeter Community HOA Board of Directors addressed the Commission to express the HOA Board's concerns with the proposed amendments to the NRCC.

Mr. Grossman began by making it clear that the HOA does not object to changes being made to help the Exeter Center become more commercially viable. He said it is in everyone's best interest that the Center be successful so long as those changes do not adversely impact the residential character of Exeter.

He said the HOA is concerned that the maximum square foot limitation is too high. This large of a single use is more suited for a broader market and destination shopping versus the daily convenience shopping needs of the neighborhood as the NRCC was originally intended.

Mr. Grossman maintains destination shopping generates a different traffic pattern than traffic generated from neighborhood serving uses. Certainly, destination shopping does not provide a draw for residents to walk to the center thus making the center more automobile-oriented.

Additionally, the HOA would like to see “Service Station” removed to prevent the 7-11 from someday installing fuel pumps at the Exeter Center. Staff notes that by definition (TLZO 18.1.39) a Convenience Food Store cannot sell gasoline.

Recommendation: The Commission voted 7-0 to recommend of approval of the proposed amendments as presented in the April 4, 2013 staff report based on the findings presented in that report and on the basis that the amendment is required for the public necessity, convenience and general welfare and is in good zoning practice.

Analysis: Since its inception in 1984, the PRN District, Neighborhood Retail Convenience Center has been geared towards permitting limited commercial uses that are compatible with the surrounding residential uses. Bear in mind that the PRN District, unlike the other Planned Districts PRC (Planned Residential Community) and PEC (Planned Employment Center) is intended to be first and foremost a *residential* development. Any commercial elements of a PRN are to be neighborhood-scale, small market area, residential convenience, meant to serve the daily shopping needs of the immediate neighborhood. They are not intended for high-traffic, town wide or regional market area serving commercial that is more appropriate in a PRC or PEC District. This is evidenced by the Neighborhood Retail Convenience Center Policies in the 1986, and the Neighborhood Retail Center Policies in the 1994 and 1997 Town Plans.

Throughout each iteration of the Town Plan until 1997 the NRCC was consistently described as serving the daily shopping needs of a limited service area ranging from 3,000 households and a one mile radius.

Throughout each iteration of the Zoning Ordinance from 1984 to present the uses in a NRCC have consistently remained those such as: convenience store, mixed retail, service, and financial and local offices. Neighborhood Retail Commercial is defined in Zoning Ordinance Section 18.1.113 as, “*Neighborhood-oriented retail uses typically include a grocery store, drugstore, personal service establishments, small specialty shops and a limited number of small professional offices.*” These uses coupled with the guidance of the Town Plans and the maximum gfa of 40,000 square feet established in the Zoning Ordinance assures the intent of the Neighborhood Retail Convenience Center to be neighborhood appropriate.

Further evidence that the NRCC is intended to be small-scale neighborhood –oriented retail and services is the fact that the use is permitted by right when approved as part of a rezoning to the PRN District. If the NRCC was intended for uses that bring greater commercial activity on the scale of the B-2 or B-3 Districts with potential to produce more traffic, noise, glare, etc., it seems

the protections afforded through the special exception process would have also been required for an NRCC. Through the special exception process Town Council and the Planning Commission would be able to apply specific conditions to mitigate the impacts from the more intensive commercial uses on the adjacent residential neighborhood.

The latest iterations of the Town Plan (2005, 2007 and 2012) no longer contain specific guidance for the Neighborhood Retail Convenience Center. Instead, the Town Plan addresses the Community Commercial Land Use Policy Type meant for specific locations identified within the text of the Plan and on the Land Use Policy Map. These areas are intended for a broader service area than the NRCC reaching a market area of 4 miles with a maximum gfa of 250,000 square feet. Policy guidance is no longer provided for neighborhood-scale retail. This could be interpreted to mean that the deletion of the language was intended to make future NRCCs somewhat less restrictive regarding the types of uses allowed.

As such, the proposed amendments provided below are intended to expand the types of permissible uses within a NRCC to increase economic vitality while maintaining the original intent of that use to meet the daily shopping and personal service needs of a neighborhood – sized area within the town.

#### Proposed Text Amendments:

### Sec. 9.3 Use Standards

#### 9.3.16 Neighborhood Retail Convenience Center

A. Centers may be comprised of a collection of stores including ~~a convenience store and~~ a mix of retail, service, ~~financial~~ and ~~local~~ office uses. ~~and may include, but are not limited to, convenience food store, eating establishment, eating establishment fast food (without drive-through facility), child care center, recreation facility (gymnasium, exercise and weight room facilities, martial arts studio, etc.), exercise studio, dance studio, retail use, mailing services, personal service establishments, and, bank without drive-in facility:~~

1. Total building floor area of a Neighborhood Retail Convenience Center shall be established at the time of rezoning and shall not exceed 40,000 square feet gross floor area.
2. No single use or business shall occupy more than 12,000 square feet of the total gross floor area of a Neighborhood Retail Convenience Center.
3. Any use proposed in excess of the maximum gross floor area provided herein must be approved by special exception.
4. No drive-through uses shall be permitted in a Neighborhood Retail Convenience Center. Other uses not permitted include: appliance repair stores, variety department stores, radio and television repair shops, veterinary hospitals, emergency care facilities, movie theaters, furniture

repair, outdoor storage, vehicle sales and/or rental facility, and vehicle and or equipment service facility.

B. Automobile service stations shall only be permitted by special exception, and in conjunction with other non-automobile related commercial uses.

~~C. The maximum size of a neighborhood retail convenience center shall be established at the time of the rezoning approval but total gross square footage shall not exceed 40,000 square feet.~~

~~D.~~ C. The center shall provide landscaped open space necessary to effectively buffer parking, service areas and building mass from adjacent residential uses and public roads.

## Sec 18.1 Terms Defined

### 18.1.113 Neighborhood Retail ~~Commercial~~ Convenience Center

Neighborhood-~~oriented retail~~ Retail Convenience Center uses established within Planned Districts are intended to serve the daily shopping and personal service needs of surrounding residential areas within a market area generally extending in a one mile radius, or 3,000 households. ~~typically include a grocery store, drug store, personal service establishments, small specialty shops and a limited number of small professional offices.~~

**Staff Recommendation:** Staff recommends of approval of the amendments presented in the April 23, 2013 staff report and based on the following findings:

- 1.) Since the inception of the Neighborhood Retail Convenience Center use in 1984 the use has been geared towards providing commercial uses meant to serve the daily shopping and personal service needs at a neighborhood scale defined as an area generally within a one mile radius or 3,000 households.
- 2.) The Neighborhood Retail Convenience Center was added to Planned Districts for the purpose of reducing the dependency on automobiles to meet the daily shopping and service needs of the residents of that particular Planned District.
- 3.) The current definition and use standards applying to the Neighborhood Retail Convenience Center are unintentionally limiting of the types of uses that are appropriate for and can be accommodated in a neighborhood setting.
- 4.) The proposed definition, uses and area limitation applied thereto expand the types of uses permissible in a Neighborhood Retail Convenience Center while maintaining the original intention of the use.

**TLOA-2013-0001**

**Zoning Ordinance Text Amendment: PRN Neighborhood Retail Convenience Center**

**Town Council Public Hearing Staff Report**

**April 23, 2013**

**Page 6 of 6**

5.) The proposed changes are required to meet a public necessity, convenience and general welfare and are in good zoning practice.

**ATTACHMENT:** (1) March 20, 2013 Email from Andrew Painter, Walsh Collucci



WALSH COLUCCI  
LUBELEY EMRICH  
& WALSH PC

MEMORANDUM

Via E-mail Only

**TO:** Town of Leesburg Planning Commission

**FROM:** Andrew A. Painter, Esq. *AA*  
Kimberlee Welsh Cummings, AICP, Land Use Planner *KWC*  
Walsh, Colucci, Lubeley, Emrich & Walsh, P.C.

**DATE:** March 20, 2013

**RE:** **TLOA-2013-0001 Zoning Ordinance Text Amendment:  
Suggested Revisions By Sizdahkhani LP**

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On behalf of **Sizdahkhani LP**, owner of Exeter Center, we are submitting proposed revisions to the draft zoning text amendment contained in the staff report for the March 21, 2013 Planning Commission public hearing.

As you may be aware, Exeter Center is an approximately 40,000-square foot neighborhood convenience center located at 700 Fieldstone Drive in Leesburg, Virginia (Loudoun County PIN #187-37-6076). Exeter Center was constructed in 2009 and, at present, there remains more than 28,000 square feet of available, vacant space. Anecdotal evidence indicates that many (though not all) of difficulties in leasing at Exeter Center find their genesis in the limitations of the Neighborhood Retail Convenience Center regulations pursuant to §§ 9.3.16 and 18.1.113 of the Zoning Ordinance of the Town of Leesburg ("Zoning Ordinance").

To that end, Sizdahkhani LP representatives met with Staff and Town Council representatives over the past several months to consider amending the Zoning Ordinance to incorporate additional uses such as a restaurant and fitness studio. While it has appreciated the Town's hospitality and "pro-business" efforts to date, and though it welcomes much of Staff's proposed language, Sizdahkhani LP is concerned that the amendment, as currently drafted, provides increased ambiguity to property owners, places new restrictions on the size of individual tenants, and reduces the Town of Leesburg's overall retail competitiveness.

While Sizdahkhani LP supports the addition of restaurant and fitness-related uses, it strongly objects to any proposal by Staff to qualify the size or type of already permitted retail uses

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ATTORNEYS AT LAW

through the replacement of the phrase "retail" with the term "small specialty shops (retail)" in the draft amendment.

Such a change would effectively place restrictions on the size and type of individual retail tenants. It would also transfer to Staff the ability to make a case-by-case, subjective determination as to whether individual tenants—which otherwise meet the definition of "retail" under § 18.1.159 of the Zoning Ordinance—sufficiently "fit in" with Neighborhood Retail Convenience Centers and only serve the immediate neighborhood. Lastly, it would potentially freeze retail leasing at the Town's Neighborhood Retail Convenience Centers as prospective retailers would be without predictability as to whether or not their use would be allowed.

Sizdahkhani LP feels that such a change runs counter to genesis of the proposed amendments, which were initially intended to *increase* flexibility and add new uses rather than adopt language which could be construed as placing new limits on already permitted uses. The Zoning Ordinance's current 40,000-square foot limitation on the size of Neighborhood Retail Convenience Centers sufficiently self-regulates the size—and, by extension, the market area—of users attracted to PRN centers. Sizdahkhani LP has already experienced difficulties attracting prospective tenants to Exeter Center and any further subjective restrictions on the size of individual tenants would only compound these problems.

Any revision should provide clarity and predictability to Staff, citizens, and property owners, and offer a precise list of permitted uses utilizing terms of art found in Article 18 of the Zoning Ordinance. To that end, a clean version of Sizdahkhani LP's suggested revisions to the Zoning Ordinance are attached [see Exhibit A] along with a redline version comparing the current Zoning Ordinance requirements with our suggested revisions [see Exhibit B]. The suggested revisions:

- 1) Revise the definition of Neighborhood Retail Convenience Center found in § 18.1.113 of the Zoning Ordinance to:
  - a. For the first time, provide a single, comprehensive definition of such centers;
  - b. For the first time, provide a comprehensive list of permitted uses which may be located in such centers;
  - c. Acknowledge the historic intent of such centers to serve a limited area with the caveat that such an intent is not to be controlling with regards to the size or type of individual tenants; and
  - d. Reduce the likelihood that prospective retail tenants will be subject to fact-based, case-by-case determination as to whether their uses are acceptable;

- 2) Rely on § 9.3.16 purely to accomplish the purpose of the use standards section of the Zoning Ordinance; that is, to provide minimum regulations for the use list found in the definition of Neighborhood Retail Convenience Centers rather than repeating the definition under the use standards; and
- 3) Prohibits those uses highlighted by Zoning Administrator Christopher Murphy's 2012 letter which were deemed incompatible with Neighborhood Retail Convenience Centers [see Exhibit C].

Thank you for your time and consideration; we look forward to working with the Planning Commission and Staff on these proposed amendments.

#### Attachments

Cc: Mr. Christopher Murphy, AICP, Zoning Administrator  
Mr. Ali Vaziri, Sizdahkhani LP  
Mr. James E. Legat, Avison Young  
J. Randall Minchew, Esq., Walsh Colucci

**EXHIBIT A**

**SUGGESTED CLARIFICATION OF  
ZONING ORDINANCE AMENDMENT CHANGES**

**TLOA-2013-0001  
PRN Neighborhood Retail Convenience Center**

**Submitted by Sizdahkhani, LP**

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Sizdahkhani, LP, owner of Exeter Center, proposes the following suggested changes to the PRN Neighborhood Retail Convenience Center amendment:

**Sec. 9.3 Use Standards**

**9.3.16 Neighborhood Retail Convenience Center**

- A. Drive-through facilities, appliance repair stores, variety department stores, radio and television repair shops, banquet facilities, veterinary hospitals, emergency care facilities, and movie theatres shall not be permitted.
- B. Service stations shall be permitted by special exception in conjunction with other non-automobile related commercial uses.
- C. The maximum size of a Neighborhood Retail Convenience Center shall be established at the time of the rezoning approval but total gross square footage shall not exceed 40,000 square feet.
- D. The center shall provide landscaped open space necessary to effectively buffer parking, service areas and building mass from adjacent residential uses and public roads.
- E. A single restaurant tenant shall be limited to a maximum of 5,000 square feet of gfa.
- F. A single indoor commercial recreation tenant shall be limited to a maximum of 5,000 square feet of gfa.
- G. A child care center shall be limited to a maximum of 2,000 square feet of gfa.
- H. Any use proposed in excess of the maximum gfa provided herein must be approved by special exception.

## **Sec 18.1 Terms Defined**

### **18.1.113 Neighborhood Retail Convenience Center**

Neighborhood Retail Convenience Centers may be established within Planned Residential Neighborhood Development zoning districts and are primarily, but not exclusively, intended to serve the daily shopping and personal service needs of a market area extending in a one mile radius, or 3,000 households. Neighborhood Retail Convenience Centers may be comprised of a mix of retail, financial, office and service uses and may include, but are not limited to, convenience food store, grocery store, restaurant (eating establishment and eating establishment fast food), bakery, child care center, indoor commercial recreational facilities (exercise studio, dance studio, martial arts studio, gym), retail uses, community retail commercial uses, medical office, pharmacy, mailing service, office supply store, bank, pet grooming salon, and services, personal.

## EXHIBIT B

### SUGGESTED AMENDMENT LANGUAGE COMPARED TO CURRENT ZONING ORDINANCE LANGUAGE

#### TLOA-2013-0001 PRN Neighborhood Retail Convenience Center

Submitted by Sizdahkhani, LP

#### Sec. 9.3 Use Standards

##### 9.3.16 Neighborhood Retail Convenience Center

- A. Drive-through facilities, appliance repair stores, variety department stores, radio and television repair shops, banquet facilities, veterinary hospitals, emergency care facilities, and movie theatres shall not be permitted.

~~A. Centers may be comprised of a collection of stores including a convenience store and a mix of retail, service, financial and local office uses.~~
- B. ~~Automobile-s~~Service stations shall ~~only~~ be permitted by special exception in conjunction with other non-automobile related commercial uses.
- C. The maximum size of a Nneighborhood Retail Convenience Center shall be established at the time of the rezoning approval but total gross square footage shall not exceed 40,000 square feet.
- D. The center shall provide landscaped open space necessary to effectively buffer parking, service areas and building mass from adjacent residential uses and public roads.
- E. A single restaurant tenant shall be limited to a maximum of 5,000 square feet of gfa.
- F. A single indoor commercial recreation tenant shall be limited to a maximum of 5,000 square feet of gfa.
- G. A child care center shall be limited to a maximum of 2,000 square feet of gfa.
- H. Any use proposed in excess of the maximum gfa provided herein must be approved by special exception.

## Sec 18.1 Terms Defined

### 18.1.113 Neighborhood Retail Convenience Center

Neighborhood Retail Convenience Centers may be established within Planned Residential Neighborhood Development zoning districts and are primarily, but not exclusively, intended to serve the daily shopping and personal service needs of a market area extending in a one mile radius, or 3,000 households. Neighborhood Retail Convenience Centers - may be comprised of a mix of retail, financial, office and service uses and may include, but are not limited to, convenience food store, grocery store, restaurant (eating establishment and eating establishment fast food), bakery, child care center, indoor commercial recreational facilities (exercise studio, dance studio, martial arts studio, gym), retail uses, community retail commercial uses, medical office, pharmacy, mailing service, office supply store, bank, pet grooming salon, and services, personal oriented retail uses typically include a grocery store, drug store, personal service establishments, small specialty shops and a limited number of small professional offices.

November 29, 2012

Andrew Painter, Esq.  
Walsh Colucci Lubeley Emrich & Walsh, PC  
1.E. Market Street, Third Floor  
Leesburg, VA 20176-3014

RE: **Zoning Determination: Exeter Neighborhood Retail Convenience Center**

Dear Mr. Painter:

I am in receipt of your request for zoning determination dated September 21, 2012 regarding the property situated at 100 Fieldstone Drive, Leesburg, VA 20176, Loudoun County Property Identification Number 187-37-6076, commonly known as the Exeter Neighborhood Retail Convenience Center.

I have copied the questions from your September 21 request letter below in bold italics and followed each with an answer to that particular question in regular text.

**Determination:**

- 1) The Subject Property is zoned to the Planned Residential Neighborhood ("PRN") zoning district pursuant to Section 8.4 et seq. of the Zoning Ordinance of the Town of Leesburg ("Zoning Ordinance").***

Answer: Correct,

The Subject Property was rezoned to PRN as part of TLZM-1985-0055 in May 1985. Subsequently, in October of 1987 TLZM-1985-0055 was amended by TLZM-1987-0087 with no imposition of any additional land use restrictions beyond those contained in the PRN Zoning District. The proffers that are still in effect on the Subject Property gets were first adopted under the zoning ordinance in effect in 1987. Additionally, the Subject Property gets the benefit of any additional uses added to the PRN district by a change in the Zoning Ordinance so long as they are not specifically prohibited by proffer or the approved concept plan.

- 2) The sole zoning entitlement encumbering the Subject Property is Town of Leesburg Ordinance #87-0-28 and Zoning Map Amendment #ZM-87***

*("Exeter"), approved on October 8, 1987 and subject to proffers and Preliminary Development Plan dated February 5, 1987, as revised through October 13, 1987, and prepared by Dewberry & Davis.*

Answer: Partly Correct,  
#ZM-87 (i.e., TLZM-1987-0087) approved in October, 1987 by Ordinance No. 87-O-28 is one of two zoning entitlements currently encumbering the Subject Property. The other is TLZM-1996-0126 approved in March, 1991 by Ordinance No. 91-O-12 which only affected deck setbacks. Note that in this opinion "zoning entitlement" refers to a proffered rezoning.

3) *A "Neighborhood Retail Convenience Center" is a permitted use on the Subject Property pursuant to both § 8.4.2 of the Zoning Ordinance as well as the use standards contained in § 9.3.16 of the Zoning Ordinance. In accordance with § 9.3.16, such Neighborhood Retail Convenience Center uses include "...a collection of stores including a convenience store and a mix of retail, service, financial and local office uses" (emphasis added), which necessarily imply the following permitted uses:*

a. *Retail Uses including, but not limited to, the following:*

i. *Neighborhood Retail Commercial uses pursuant to § 18.1.113 of the Zoning Ordinance including, but not limited to, convenience store (§ 18.1.14), grocery store (with restaurant), drug store and pharmacy (§ 18.1.139), personal service establishments (§ 18.1.168), small specialty shops, and a limited number of small professional offices (§ 18.1.39);*

Answer: Partly Correct,  
The first statement is correct in that a Neighborhood Retail Commercial Center is a permitted use on the subject property pursuant to both TLZO Section 8.4.2 and the use standards contained in TLZO Section 9.3.16 unless modified by the ordinance approving the rezoning. However, the definition of "Retail Uses" does not imply Neighborhood Retail Commercial.

The Leesburg Zoning Ordinance defines Retail Use in Sec.18.1.159 as being:

*"Any use wherein the primary occupation is the sale of merchandise in small quantities, in broken lots or parcels, not in bulk, for use or consumption by the immediate purchaser. For the purpose of this Zoning Ordinance, retail uses shall not be deemed to include automobile-oriented uses, vehicle sale, rental and/or service or convenience retail."*

The definition of retail use specifically *excludes* convenience retail so “Retail Use” cannot be equated with Neighborhood Retail Commercial” which you state includes “convenience store”. However, a convenience store is permitted by the definition of Neighborhood Retail Convenience Center (TLZO Sec. 9.3.16). In addition, you have added a “grocery store (with restaurant)” and “personal service establishments” to what would be permitted in the Neighborhood Retail Convenience Center through the definition of Neighborhood Retail Commercial (TLZO Sec. 18.1.113). A grocery store there by itself is permitted but not with a restaurant, which is a separately defined use. Personal service establishments are discussed below note that the definition of Neighborhood Retail Convenience Center limits the size of the center to no more than 40,000 square feet and intends a variety of small scale uses to be provided to the local neighborhood’s citizens.

- ii. Small specialty shop uses pursuant to the "Neighborhood Retail Commercial" definition contained in § 18.1.113 of the Zoning Ordinance including, but not limited to, appliance repair and rental, bicycle repair and service, caterer, bakery, furniture repair and/or restoration, upholsterer, locksmith, pet grooming establishment, musical instrument repair and rental, showrooms with storage (for example, furniture, flooring, tile, marble, granite, paint, wall coverings, fixtures, hardware, etc.), architecture and interior design studios;*

Answer: Partly Correct,

Due to the fact that a Neighborhood Convenience Retail Center permits neighborhood-scale personal service uses, financial and local office uses, those types of uses will qualify under the “Small Specialty Shops” uses pursuant to Section 18.1.113. Those uses that require extensive storage areas for merchandise or large-scale delivery operations are intended to serve customers in a much greater market area than is intended for a Neighborhood Retail Convenience Center and are therefore not permitted. Of the uses provided in your letter I would include bicycle repair and service, caterer, locksmith, furniture repair and/or restoration, musical instrument repair and rental as qualified specialty shops

- iii. Retail uses pursuant to §§ 9.3.16 and 18.1.159 of the Zoning Ordinance including, but not limited to, apparel, jewelry, art, antiques, collectibles, home goods, coffee and tea, wine, beer or liquor, pet food and accessories, thrift shop, mailing service (§ 18.1.102), and consignment store;*

Answer: Correct,

The uses provided in your request letter all qualify as Retail Uses as that use is defined in Sec. 18.1.159.

b. Service Uses, including, but not limited to, the following:

- i. *Personal service uses pursuant to § 9.3.16 and § 18.1.168 of the Zoning Ordinance including, but not limited to, barber shops, beauty parlors, pet grooming establishments, laundering, cleaning and other garment servicing establishments, tailors, dressmaking shops, shoe cleaning or repair shops, exercise studios (§ 18.1.59.1), health clubs, indoor recreation facilities (§ 18.1.156), dance studio (§18.1.40.1); and other similar places of business;*

Answer: Incorrect,

Personal Service uses as defined in Sec. 18.1.168 include any service wherein the primary occupation is the repair, care of, maintenance or customizing of personal properties that are worn or carried about the person or are a physical component of the person, (e.g., hair and nails). Thus, exercise studio, health clubs, indoor recreation facilities and dance studios do not qualify as Personal Services Uses. Evidence of this fact is that each of those uses is separately defined in Article 18 Definitions and listed separately as uses in Article 9 Use Regulations.

- ii. *Service-oriented uses pursuant to § 9.3.16 of the Zoning Ordinance including, but not limited to, child care centers (§ 18.1.29), banquet facility, professional veterinary services (§ 18.1.29), fast food eating establishment without a drive-through (§ 18.1.55), and small non-fast food eating establishments, without drive through (§ 18.1.54).*

Answer: Incorrect,

The “service” elements of a Neighborhood Retail Convenience Center are specifically those types of uses described in the definition of Personal Services found in Sec. 18.1.168 and do not venture into child care, veterinary services or restaurants types of uses. Again, the definition of a Neighborhood Retail Commercial Use in Sec. 18.1.113 stipulates that the use is comprised of “Neighborhood-oriented retail uses”, “personal service establishments”, “small specialty shops” and “small professional offices” in a limited number. Under the Zoning Ordinance in effect when the Exeter PRN was adopted in 1987 the Neighborhood Retail Convenience Center was described in Sec 7B-15(2)(bb)(ii) as being “*comprised of a convenience store or collection of stores including mixed retail, service, financial and local office uses*” In the 1987 Zoning Ordinance did not define “Services”, however the 1990 revision to the Zoning Ordinance clarified what the intent of that use is by establishing the defined use, Services, Personal. And to further clarify what is not included in “service uses” the 1990 Zoning Ordinance also defines Child Care, Veterinary

Hospital, Eating Establishments and Drive-In Facilities as separate uses outside of what is included as part of a Neighborhood Retail Convenience Center.

As to the inclusion of "banquet facilities use", in no case is the intent to include public gathering uses such as that or convention halls, meeting spaces, etc.

- c. *Financial uses pursuant to pursuant to §§ 9.3.16 and 18.1.14 of the Zoning Ordinance including, but not limited to, a bank without a drive-through facility; and*

Answer: Correct

A bank without a drive-through is an acceptable use in a Neighborhood Retail Convenience Center.

- d. *Local office uses pursuant to §§ 9.3.16, 18.1.113, and 18.1.121 of the Zoning Ordinance including, but not limited to, small professional, financial, medical, and business uses.*

Answer: Correct,

However, in the case of "medical" uses, it is my opinion that this is limited to physician's offices and does not include veterinary facilities or urgi-care facilities due to the intent of the Neighborhood Retail Convenience Center to be compatible with surrounding residential uses.

### **Right of Appeal:**

In accordance with Section 15.2-2311 of the Code of Virginia, as amended, any person aggrieved by any written decision or determination of the Zoning Administrator has thirty (30) days to appeal the Zoning Administrator's decision/determination to the Board of Zoning Appeals in accordance with Zoning Ordinance Section 3.14 Appeals & Administrative Decisions.

This interpretation shall be final and unappealable if not appealed within thirty (30) days. To file an appeal you must (1) complete an application form available from the Department of Planning & Zoning counter, second floor of Town Hall, 25 W. Market Street, Leesburg, VA 20176, or on line at <http://www.leesburgva.gov/Modules/ShowDocument.aspx?documentid=1816>; (2) include a copy of this notice; (3) provide a written statement specifying the grounds for your appeal; and (4) include a check payable to the Town of Leesburg in the amount of three hundred fifty dollars (\$350.00). This appeal must be filed with the Zoning

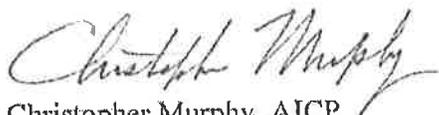
Zoning Determination Letter  
TLZC-2012-0018  
Exeter Neighborhood Retail Convenience Center  
November 29, 2012  
Page 6 of 6

Administrator and Secretary to the Board of Zoning Appeals no later than thirty (30) days from the date of this notice.

**Zoning Administrator's Right to Modify.** Code of Virginia Section 15.2-2311.C., as amended, permits the Zoning Administrator or other administrative officer to change, modify or reverse any decision/determination within sixty (60) days of the date of issuance under certain conditions.

Please feel free to contact me if you have any questions or are in need of any further assistance. I may be reached by telephone at (703) 737-7009, or via email at [cmurphy@leesburgva.gov](mailto:cmurphy@leesburgva.gov).

Sincerely,



Christopher Murphy, AICP  
Zoning Administrator

ATTACHMENT      September 21, 2012 Zoning Determination Request Letter

cc:      Susan Berry Hill, Director, Dept of Planning & Zoning  
         Brian Boucher, Deputy Director, Dept of Planning & Zoning  
         Scott Parker, Assistant to the Town Manager  
         LMIS File: TLZC-2012-0018

PRESENTED April 23, 2013

ORDINANCE NO.: \_\_\_\_\_

ADOPTED: \_\_\_\_\_

AN ORDINANCE: AMENDMENTS TO ARTICLE 9 AND ARTICLE 18 OF THE LEESBURG ZONING ORDINANCE TO REVISE THE DEFINITION PERTAINING TO AND THE USES THAT ARE PERMISSIBLE TO BE INCLUDED AS PART OF A NEIGHBORHOOD RETAIL CONVENIENCE CENTER WITHIN PLANNED DISTRICTS

WHEREAS, the Neighborhood Retail Convenience Center is a use permitted by right in the PRN - Planned Residential Neighborhood District when listed in the ordinance approving the concept plan and establishing the district ; and

WHEREAS, the Neighborhood Retail Convenience Center use was established as part of the initial establishment of planned districts within the Leesburg Zoning Ordinance under Ordinance 84-O-18 approved May, 23, 1984, and;

WHEREAS, the permitted uses within a Neighborhood Retail Convenience Center were first established in 1984 under Ordinance 84-O-18 and have remained unchanged through subsequent amendments to the Leesburg Zoning Ordinance to this day, and;

WHEREAS, changes in market forces, technology and commercial and service demands by residents of the Town unforeseen in 1984 have made it the best interest of the Town Council to consider amending the types of uses that are appropriate for inclusion as part of a Neighborhood Retail Convenience Center in order to secure the economic viability of and adequate neighborhood-scale service provisions of such centers within the Town to create more efficient and livable neighborhood, and;

AN ORDINANCE: AMENDMENTS TO ARTICLE 9 AND ARTICLE 18 OF THE LEESBURG ZONING ORDINANCE TO REVISE THE DEFINITION PERTAINING TO AND THE USES THAT ARE PERMISSIBLE TO BE INCLUDED AS PART OF A NEIGHBORHOOD RETAIL CONVENIENCE CENTER WITHIN PLANNED DISTRICTS

WHEREAS, Town Council initiated a zoning ordinance amendment to consider amendments to the Neighborhood Retail Convenience Center use on January 8, 2013, and;

WHEREAS, the Planning Commission held a public hearing on the proposed amendments on March 21, 2013 and forwarded the amendments provided herein to the Town Council with a recommendation of approval, and;

WHEREAS, the public necessity, convenience, general welfare and good zoning practice require the proposed amendments.

THEREFORE, RESOLVED by the Council of the Town of Leesburg in Virginia as follows:

SECTION I. That the following sections of the Zoning Ordinance of the Town of Leesburg, Virginia, 2003, as amended, be and the same are hereby amended to read as follows:

## **Sec. 9.3 Use Standards**

### **9.3.16 Neighborhood Retail Convenience Center**

A. Centers may be comprised of a collection of stores including ~~a convenience store~~ and a mix of retail, service, ~~financial~~ and ~~local~~ office uses. and may include, but are not limited to, convenience food store, eating establishment, eating establishment fast food (without drive-through facility), child care center, recreation facility (gymnasium, exercise and weight room facilities, martial arts studio, etc.), exercise studio, dance studio, retail use, mailing services, personal service establishments, and, bank without drive-in facility:

1. Total building floor area of a Neighborhood Retail Convenience Center shall be established at the time of rezoning and shall not exceed 40,000 square feet gross floor area.
2. No single use or business shall occupy more than 12,000 square feet of the total gross floor area of a Neighborhood Retail Convenience Center.

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3. Any use proposed in excess of the maximum gross floor area provided herein must be approved by special exception.
  4. No drive-through uses shall be permitted in a Neighborhood Retail Convenience Center. Other uses not permitted include: appliance repair stores, variety department stores, radio and television repair shops, veterinary hospitals, emergency care facilities, movie theaters, furniture repair, outdoor storage, vehicle sales and/or rental facility, and vehicle and or equipment service facility.
- B. Automobile service stations shall only be permitted by special exception, and in conjunction with other non-automobile related commercial uses.
- ~~C. The maximum size of a neighborhood retail convenience center shall be established at the time of the rezoning approval but total gross square footage shall not exceed 40,000 square feet.~~
- D. **C.** The center shall provide landscaped open space necessary to effectively buffer parking, service areas and building mass from adjacent residential uses and public roads.

## Sec 18.1 Terms Defined

- 18.1.113 Neighborhood Retail ~~Commercial~~ Convenience Center**  
Neighborhood-oriented retail ~~Retail~~ Convenience Center uses established within Planned Districts are intended to serve the daily shopping and personal service needs of surrounding residential areas within a market area generally extending in a one mile radius, or 3,000 households. ~~typically include a grocery store, drug store, personal service establishments, small specialty shops and a limited number of small professional offices.~~

SECTION II This ordinance shall be effective upon its adoption.

PASSED this \_\_\_ day of \_\_\_\_\_ 2011.

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Kristen C. Umstattd, Mayor  
Town of Leesburg

ATTEST:

AN ORDINANCE: AMENDMENTS TO ARTICLE 9 AND ARTICLE 18 OF THE  
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Clerk of Council