

Memorandum

To: Planning Board

Re: Planning Board Agenda Item # 1: Recommendation to Town Council on Change to Town Center District Hours of Operation.

From: Carla Nixon, Town Planner

Date: March 14, 2024

This is a request for a recommendation from the Town Council on a proposed change to the Town Center District (TCD) ordinance relating to hours of operation.

The request was made by the current owner and operator of Rise Pizza. The change, if approved, would also extend hours of operation to all other non-residential uses in the district. This would include Dara Restaurant and the Food Stop, as well as any other non-residential uses such as professional offices.

By way of background, the TCD replaced the previous Medium Density Residential District (MDR) in 2010 in an attempt to create a more diverse “Main Street” that would allow limited non-residential uses. There was particular attention paid to the impact of a new proposed use: Cafes. The Town Center Advisory Committee proposed that there be performance standards that would mitigate any negative impacts of the new use on abutting residential properties. Please refer to the attached Town Center District to see how, through restrictions on size, hours of operation, outdoor seating, ventilation, signage, parking, outdoor seating, deliveries, and noise limits, this was accomplished.

There will likely be residents at the meeting to express their concern about the proposed change. I have spoken with several so far who see this proposed change as a “slippery slope” that will adversely affect their quality of life.

The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.

§ 315-21 Town Center District (TCD).

A. The purpose of the Town Center District (TCD) is to provide an area in the center of Town that will allow for a mix of residential and low-intensity commercial uses that will enhance the livability and sustainability of the community.

- (1) All multiplex and nonresidential development shall be subject to the Town Center District Design Standards.
- (2) All multiplex and nonresidential uses shall be subject to Chapter **229**, Site Plan Review.
- (3) All development in this area shall be connected to public water and sewer, when available.

B. The following uses are permitted in the TCD:

- (1) Single-family dwellings.
 - (2) Duplex dwellings.
 - (3) Multiplex dwellings, subject to the provisions of § **315-44**, Multiplex dwellings.
 - (4) An accessory dwelling unit as permitted in § **315-45A**. **[Added 11-26-2012]**
 - (5) Personal services.
 - (6) Business and professional offices.
 - (7) Retail stores, maximum 2,000 square feet. Square footage shall not include internal storage areas.
 - (8) Small markets, maximum 2,500 square feet, with no drive-through. Square footage shall not include internal storage areas.
 - (9) Cafes, maximum 2,500 square feet, with no drive-through and in accordance with § **315-18F(3)**. Square footage shall not include internal storage areas and outdoor seating areas. Square footage shall include bathrooms, prep areas, cooking area and dining area. **[Amended 6-1-2015]**
 - (10) Residential care facilities, subject to § **315-71**.
 - (11) Health and fitness studio.
 - (12) Day-care centers and nursery schools for no more than 50 children, subject to the provisions of § **315-47** and site plan review. **[Amended 6-14-2021; 9-13-2021]**
 - (13) Municipal uses and buildings.
 - (14) Sewer pumping stations, subject to the provisions of § **315-59D**.
 - (15) Uses and buildings accessory to those above, except that no accessory storage units and buildings for nonresidential uses shall be permitted.
- C. The following uses are allowed as special exceptions in the TCD, requiring the approval of the Board of Adjustment and Appeals:

- (1) Home occupations.
- (2) Home-based occupations.
- (3) Home-based retail (subject to site plan review).
- (4) Bed-and-breakfasts.
- (5) Day-care homes.
- (6) Adult day care.
- (7) Accessory structures of public utilities.
- (8) Aboveground utility lines.
- (9) Uses and buildings accessory to those above.

D. The following lot standards shall apply within the TCD:

- (1) Minimum lot size of 10,000 square feet per unit if on public sewer; 20,000 square feet if not on public sewer.
- (2) In the case of duplex or multiplex developments, the minimum lot area per dwelling unit shall be no less than 5,000 square feet if on public sewer.
- (3) There shall be no less than 80 feet of lot frontage. This provision shall not apply to Map U13 Lot 109.
- (4) There may be multiple uses on one parcel as long as each use meets the required lot standards.

E. The following minimum setbacks are required for all structures in the TCD, except that sheds and driveways are permitted to a minimum setback of eight feet from the side and rear lot lines:

- (1) Front: 15 feet.
- (2) Rear: 15 feet.
- (3) Side: 10 feet.

F. The following performance standards shall apply within the TCD; provided, however that the Planning Board may determine, based on the specific elements of a proposed development, that the standards be modified. For additional requirements relating to building and site improvements, refer to the Town Center District Design Standards.

- (1) Building design. New structures, excluding single-family homes, within the district shall be of a New England architectural style and materials consistent with Section 2.1 of the Design Standards.
- (2) Lighting. The use of exterior lighting shall be only as required for safety and to identify, during business hours only, businesses, parking areas and sidewalks. Fixtures shall be fully shielded, giving off no light above the horizontal plane. There shall be no internally illuminated signs. No greater than one footcandle of lighting is permitted on the site, and there shall be zero footcandle at the property line.
- (3) Cafe standards.
 - (a) Seating shall be limited to 48 seats.

- (b) No more than 20 square feet of advertising shall be permitted on site. There shall be no advertising placed in windows or doorways of the building. Advertising shall not include internally illuminated signs.
- (c) Kitchen ventilation hoods will not be mounted on the front door street side of the building and will be located to minimize impact on neighboring properties.
- (d) Outdoor seating is permitted but must be buffered from adjacent uses by fencing and plantings unless located between the front of the structure and the public right-of-way. Outdoor seating shall not be counted toward the total seating referenced in Subsection **F(3)(a)**. Outdoor seating shall be permitted for up to 16 seats unless the Planning Board finds the unique characteristics of the site allows for additional outdoor seating. No additional parking shall be required for outdoor seating. **[Amended 6-1-2015]**
- (e) All parking and loading facilities shall be located to the side or rear of the building and shall be screened from abutting residences within 200 feet. Screening shall be comprised of a continuous landscaped area not less than eight feet in width containing evergreen shrubs, trees, fences, walls, berms, or any combination, forming a visual barrier not less than six feet in height.
- (f) Rest room facilities for the patrons shall be provided on the premises.
- (4) Parking standards. Parking shall be located to the side or rear of multiplex residential and nonresidential structures.
- (5) Buffering and landscaping. All nonresidential uses must provide for the buffering of adjacent uses, where there is a transition from one type of use to another use, and for the screening of mechanical equipment and service and storage areas. The buffer may be provided by distance, landscaping, fencing, changes in grade and/or a combination of these or other techniques.
- (6) **Hours of operation. All nonresidential uses in the TCD shall be open for business only within the time frame of 6:00 a.m. to 9:00 p.m. Sunday – Wednesday and 6:00a.m. to 11:00 p.m. Thursday – Saturday.**
- (7) Commercial deliveries. Commercial deliveries shall be limited to the hours of 7:00 a.m. to 7:00 p.m. for all nonresidential uses added to the district after April 11, 2011.
- (8) Noise.
 - (a) Intent. These performance standards governing noise are intended to ensure that the rights of property owners, as well as the overall health and general welfare of the district, are not diminished by unreasonable noise levels generated by any permitted or special exception use within the district.
 - (b) Maximum permissible sound level. The maximum permissible sound level produced by any continuous, regular, or frequent source of sound or noise shall not exceed a measurable level of 75 dB beyond the property boundaries of the site upon which the sound or noise is generated or originates.
 - (c) Sound or noise abatement. In order to comply with these maximum sound level requirements, sound or noise level abatement techniques may be used to mitigate levels of site-generated sound or noise. To this end, modern acoustical technology may be applied to achieve compliance with these regulations.
 - (d) Measurement of sound or noise. In cases where sound measurements are required in order to ensure compliance with these regulations, measurements shall be:
 - [1] Taken with a device meeting the standards of the American National Standards Institute, American Standard Specifications for General Purpose Sound Level Meters;
 - [2] Taken at a height of four feet above prevailing grade at the property boundary in question;

[3] Taken with the instrument set to the A-weighted response scale; and

[4] Recorded by an individual familiar with sound measurement and the particular device being used.

(e) Exemptions.

[1] Activities related to public and private construction or maintenance work, agriculture, emergency warning devices, and other similar short-term or temporary uses may be administratively exempted from the requirements of this section if, in the opinion of the Code Enforcement Officer or his/her agent, sufficient reason exists to do so.

[2] In these special circumstances, the Code Enforcement Officer may place reasonable conditions (such as time limitations and hours of operation) on such an exemption.

24 – 008 To hold a Public Hearing to consider and act on forwarding to the Planning Board for a Public Hearing and recommendation, amendments to Chapter 315 (Zoning), Section 21 (Town Center District) F(6) (Hours of Operation), as recommended by the Ordinance Committee.

Councilor Edes explained that about a month ago, he stopped at Rise Pizza on Main Street and was talking to the owner, Toby, and learned that because of our ordinance, he had to close at 9:00 p.m. every night. If there is a high school football game that gets over around that time, there are likely a lot of people who might like to stop in for a bite to eat or to bring a pizza home. The business is very quiet, they don't have live music, and it would not be a disruption to the neighborhood. It will allow us to support the businesses on Main Street and allow them to be open until 11:00 p.m. on Thursday, Friday, and Saturday.

Councilor Copp said that yesterday was the Super Bowl. Why not consider Thursday through Sunday until 11:00 p.m.? It makes sense to him that Sunday is the end of the weekend.

Chairman Segrist opened the Public Hearing.

The owner of Rise Pizza said that he is receptive to anything. Being able to be open a couple more hours on the weekends will make a big difference for his business.

Christopher Yale of Greely Road said that if they are allowed to be open later, the patrons will decide if it's successful.

Chairman Segrist closed the Public Hearing.

Motion by Councilor Storey-King, seconded by Councilor Copp, to forward to the Planning Board for a Public Hearing and recommendation, amendments to Chapter 315 (Zoning), Section 21 (Town Center District) F(6) (Hours of Operation), as recommended by the Ordinance Committee, with the amendment of Thursday through Sunday to 11:00 P.M.

VOTE: 7-0 UNANIMOUS

March 14, 2024

Dear Town Planners,

I was very saddened and discouraged to hear that the town is considering changing the ordinance in the Town Center District to allow businesses to stay open until 11:00 P.M. I am a resident of 321 Main Street and the northern abutter of Rise Pizza and Pub.

Having now lived on Main Street for twenty years, I have seen many changes occur in the center of town — perhaps the most significant being zone change. When we first moved to Cumberland, we purchased a home in a residential zone. At the time, we very consciously looked for a home in a residentially zoned village center where our children could walk to school, we could garden, could enjoy our yard and participate in a lively neighborhood environment.

Following a number of development project where contract zoning was implemented to allow businesses to locate and operate in an otherwise residential zone, ten years ago the Town Council decided to change the entire Town Center District zoning from residential to mixed use business and residential. Despite our worries as homeowners about the impact on our homes and lives, the council explained that this change would allow for better oversight, design standards and solid ordinances which would be in keeping with the spirit of Main Street and accommodate both residential life and businesses.

Part of my frustration is that when the zone change occurred, The Town Council, The Planning Board, and Main Street residents had numerous meetings during which we discussed and generated business rules and guidelines that would answer the needs of all people involved. We were concerned about noise, light leakage and buffering. Over the course of many meetings we were able to devise reasonable hours of operation, delivery times, rules about lighting, buffering, types of business etc. It felt like the town cared about the residential life quality while still allowing businesses to be operational. At this point a random consideration to change the ordinance just because a new business owner has requested it feels like a breach of agreement and trust that we put in the town to devise a livable and business appropriate town center.

For ten years, Louie's Grill operated successfully within the parameters of the ordinances. As neighbors, we had a wonderful and fun relationship with Jim Guidi, the owner of Louie's. Since the sale of Louie's and the arrival of Rise Pizza and Pub, however, we have seen a string of issues that have not easily been resolved. The difficulty of the business transition became apparent when the

current owners installed very bright and invasive lighting. When I approached the owner with my concerns, he was uninterested in working with me to make things better. I asked the town to intercede, which they did. The lights were changed although they are still bright enough to be invasive.

It is clear that the current owner is not committed to uphold current ordinances. According to business rules, lights are meant to be turned off after hours of operation - of course there is some lag in a restaurant where clean up must occur once the business is closed, however the lights continue to burn brightly at Rise until after midnight. These lights illuminate the inside of our home and are glaring in our backyard.

If Rise Pizza and Pub is allowed to remain open until 11:00 P.M., the parking lot lights and front sign illumination will be on until well past midnight into the early morning hours. I imagine that most people who are Rise customers past 9:00 PM are primarily drinking and, as is currently the case earlier in the evening, people will leave the pub, stand in the parking lot talking and laughing loudly, slam car doors and start engines.

We have a lovely garden and in-ground pool (people frequently describe our yard as an oasis) which shares the fence with Rise Pizza whose parking lot is a mere few feet away. If Rise is allowed to remain open until 11:00 we will have no quiet time in our own yard and patio during the blissful summer months without glaring lights, parking lot noise, loud public conversations and the smell of employees' cigarettes and pot, a now frequent addition with this new business.

Please deny the request for businesses to remain open until 11:00 P.M. and hold true to your commitment to protect the spirit of Main Street and continue to oversee that this area is livable and lovely for both residents and business alike.

Thank you for your consideration,

Sincerely,

Carolyn Currie
321 Main Street
Cumberland, ME

To Carla Nixon and the Planning Board,
Re: Allowing late night hours of operation in the Town Center District

If something ain't broke don't "fix" it!

Cumberland Center's current 9 pm closing time for businesses was carefully established in order to preserve our mixed use neighborhood's unique character and quality of life for residents and businesses alike. And it's worked well for many years.

It's my understanding that only one business, Rise Pizza & Pub, requested the zoning change to the much later closing hour of 11 pm. Why would the Town give favored status to Rise's request so it can serve more as a late night bar and less as a "family friendly" restaurant?! Late night patrons at bars tend to be more intoxicated, less inhibited and generally a rowdier crowd generating more public disturbances, complaints, and police action.

Suddenly amending our district's zoning to allow extended hours until 11 pm at all existing and future businesses would be a shortsighted and misguided change with the potential for serious, negative impacts on our quality of life in our beloved homes, while downgrading our residential property values.

Already at Rise Pizza & Pub we've seen intensely bright, unshielded lights installed in violation of the town's ordinance (since improved after town enforcement but still very bright and impacting my home and patio, among others). While town regulations require lights to be shut off at closing, the exterior lights at Rise have been staying on after 11 every night. Extending operating hours later at night will only make this worse.

We're already getting more activity and noise later at night at Rise than when Louie's was there. (Jim closed at 9 and his employees were usually out by 9:30 or so.) While currently Rise is required to stop serving food and drink at 9, there have been some nights on occasion when I've heard employees leaving at 10:45 pm. If hours were to be extended to customers until 11 pm, does that mean we could expect employees to be leaving as late as 12:45 am?

At Rise, several cars regularly "back in" to park in the far corner of the lot nearest the school where their tailpipes are just twenty feet or so from my condo. As a result, I get stinky exhaust fumes wafting across my patio and in my bedroom window, especially when cars are idling for prolonged periods, a frequent occurrence. I certainly would not like to see this unhealthy situation extended even later than it already is!

As neighbors we should not have to endure the sounds of yelling, slamming doors, sound systems, and revving engines late at night, or the smells of exhaust and smoke interfering with our right to be able to enjoy our homes and sleep in peace.

Please vote NO on allowing late night hours of operation in the Town Center District!

Thank you.

-Lee Buffinton, 10 Village Way, Cumberland Center, Maine

From: Contact form at cumberlandme <cmsmailer@civicplus.com>
Sent: Tuesday, March 19, 2024 8:17 AM
To: Carla Nixon <cnixon@cumberlandmaine.com>
Subject: [cumberlandme] Town Center District Zone change (Sent by Lori Legere, houselady512@yahoo.com)

WARNING: This is an external email that originated outside of our email system. DO NOT CLICK links or open attachments unless you recognize the sender and know that the content is safe!

Hello cnixon,

Lori Legere (houselady512@yahoo.com) has sent you a message via your contact form (<https://www.cumberlandmaine.com/user/21/contact>) at cumberlandme.

If you don't want to receive such e-mails, you can change your settings at <https://www.cumberlandmaine.com/user/21/edit>.

Message:

Good Morning,

I recently learned that Rise Pizza and Pub has requested a zoning change to allow it to remain open until 11pm on certain days, 2 hours later than the now 9pm time. I have lived in a condo adjacent to "Rise" (parking lot side) for 5 years and there have not been any issues when it was "Louis".

When the new owner took over, they expanded the Bar significantly and now it has the feel of a Bar rather than a family gathering space/ restaurant.

The noise, traffic lights and trash this late night will produce is not fair to those of us that were given the information that "the restaurant behind you closes at 9pm". I could live with that and we did go to "Louis" often.

If I had been told the restaurant closed at 11pm I most likely would not have purchased it.

I wish "Rise" success as I support small local businesses, but they purchased the property knowing the rules in place and now want to change them, which is not what good neighbors do.

I request the hours remain the same in the zone, Thank you,
Lori Legere
8 Village Way
Cumberland

From: Jim Mallar <jalinop@aol.com>
Sent: Tuesday, March 19, 2024 2:48 PM
To: Carla Nixon <cnixon@cumberlandmaine.com>
Subject: Zoning change meeting.....

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March 19, 2024

To Carla Nixon, Town of Cumberland
Town Council
Planning Board

I am writing you all out of concern for the proposed change of hours for businesses in the Cumberland Center Business District. Specifically allowing businesses to be open extended hours to 11:00PM. We live on Village Way directly next to Rise Pizza and Pub. Village Way is a community of 6 residential condos that are 55+ age restricted. The only thing that separates us from Rise Pizza and Pub is a wooden fence which is supposed to be maintained by Rise. This has not been done according to the original agreement. (it has some broken posts, which were not replaced but reinforced by using metal poles last fall)

We are a residential neighborhood primarily single family homes. Extending hours past 9:00PM would change that whole dynamics. It adds vehicles and all the noises associated with it....revving of engines, trucks, motorcycles, horns, barking dogs left inside vehicles, slamming of car doors, car alarms (the most annoying) and people talking with particularly loud and boisterous voices. The Business District hours were set years ago in a compromise with residents and businesses. Both have thrived in the years that this compromise has been in place. Now making that change would be a detriment to those private residents.

We knew the rules when we purchased our condo. Rise knew the rules when they bought the restaurant. Unless everyone in the neighborhood wants the rules to change, they should stay in place as the original agreement states. Please do not allow this late night change based on the request of 1 or maybe 2 businesses.

Thank you for listening to two concerned (and elderly) citizens.

Jim and Debbie Mallar
Village Way
Cumberland, Maine

From: Jessica Privler <jprivler@yahoo.com>
Sent: Tuesday, March 19, 2024 8:45 AM
To: Carla Nixon <cnixon@cumberlandmaine.com>
Subject: Main Street

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Good morning,

My family and I recently moved to Main Street in Cumberland Center. We love the proximity of the school for our children, the small businesses, the quiet neighborhoods, and the feeling of community. Please keep in mind the residents and our desire to maintain our quiet neighborhoods when considering the proposal for allowing businesses to stay open until 11:00 p.m. It is simply too late for a small town like ours; had we wanted nightlife, we would have chosen Portland.

Thank you.

Best regards,

Jessica Privler
324 Main St