

12/12/1996

Ordinance

258-96

ORDINANCE NO. 258-96

AN ORDINANCE AMENDING ARTICLES 8-19 AND 8-20 OF THE ZONING ORDINANCE SO AS TO ADD THE RETAIL SALE OF NEW FURNITURE AS ACCESSORY TO USES IN THE WHOLESALE AND WAREHOUSE (B-4) AND LIGHT INDUSTRIAL (I-1) ZONES.

WHEREAS, the Lexington-Fayette Urban County Planning Commission has considered a text amendment proposed to it so as to add the retail sale of new furniture as accessory to uses in the wholesale and warehouse (B-4) and light industrial (I-1) zones; and

WHEREAS, the Planning Commission held a public hearing on this proposed text amendment on November 21, 1996; and

WHEREAS, the Planning Commission recommended approval of the staff alternative of this proposed text amendment by a vote of 7-1; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated by reference herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That Articles 8-19 and 8-20 of the Zoning Ordinance of the Lexington-Fayette Urban County Government be and hereby is amended to read as set forth in the Planning Commission's Recommendation which is attached hereto and incorporated herein by reference.

Section 2 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: December 12, 1996



MAYOR

ATTEST:



CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: December 18, 1996-1t

0-258-96

Rec'd By JK

Date: 12/5/96

Urban County Planning Commission
200 East Main St., Lexington, KY

Office of Director
Planning Commission Meeting

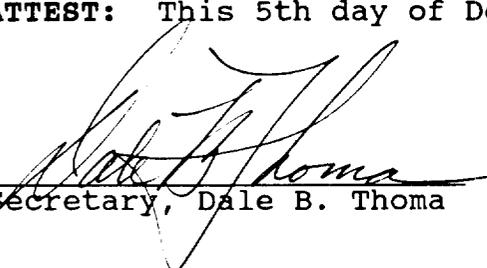
RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

IN RE: ZOTA 96-9: AMD. TO ARTICLES 8-19 AND 8-20; RETAIL SALE OF NEW FURNITURE AS ACCESSORY USE IN THE B-4 AND I-1 ZONES - a proposed text amendment to add the retail sale of new furniture as accessory to uses in the wholesale & warehouse (B-4) and light industrial (I-1) zones.

Having considered the above matter on November 21, 1996 at a Public Hearing and having voted 7-1 that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend APPROVAL of the STAFF ALTERNATIVE of this matter for the following reason:

1. Retail sales of furniture as a conditional use is appropriate since the related uses of furniture storage, refinishing, repairing, and upholstery and mail-order businesses are already permitted uses in the B-4 and I-1 zones.
2. This amendment will set appropriate limits to this specific use, consistent with the practice of other cities in California, North Carolina and Massachusetts.

ATTEST: This 5th day of December, 1996.


Secretary, Dale B. Thoma

WALTER W. MAY
CHAIRMAN

Enclosures: Staff Report w/proposed text
Applicable Excerpts of minutes of above meeting

At the Public Hearing before the Urban County Planning Commission, this Petition was represented by Mr. James Amato.

OBJECTIONS

OBJECTORS

None

None

VOTES WERE AS FOLLOWS:

AYES:	(7)	Ballentine, Harper, Logan, Lucas, May, Price, Robinson
NAYS:	(1)	Lucas
ABSENT:	(3)	Cooper, Gregg, Vose
ABSTAINED:	(0)	
DISQUALIFIED:	(0)	

Motion for APPROVAL of ZOTA 96-9: AMD. TO ARTICLES 8-19 AND 8-20: RETAIL SALE OF NEW FURNITURE IN THE B-4 AND I-1 ZONES carried.

GENERAL INFORMATION

1. APPLICANT INFORMATION (Name, Address, Zip, Phone No.)	3. DESCRIBE YOUR JUSTIFICATION FOR REQUESTED AMENDMENT						
APPLICANT: <u>Lexington Furniture Company, Inc</u> <u>1117 Winchester Road</u> <u>Lexington, KY 40505</u> James G. Amato, Esq. ATTORNEY: <u>McBrayer, McGinnis, Leslie & Kirkland</u> <u>163 West Short St., Ste. 300</u> <u>Lexington, KY 40507</u> <u>(606) 231-8780</u>	<u>See Exhibit "B" attached.</u>						
2. DESCRIBE YOUR REQUESTED CHANGE (Use attachment if needed) ARTICLE #							
<u>See Exhibit "A" attached.</u>							
	4. APPLICANT AND/OR ATTORNEY SIGN THIS CERTIFICATION I do hereby certify that, to the best of my knowledge and belief, all application materials are herewith submitted, and the information they contain is true and accurate. <table border="0"> <tr> <td style="text-align: center;">Signature</td> <td style="text-align: center;">Date</td> </tr> <tr> <td>APPLICANT <u>Lexington Furniture Company, Inc</u></td> <td>_____</td> </tr> <tr> <td>ATTORNEY BY: <u>James G. Amato</u></td> <td>_____</td> </tr> </table> (LFUCG EMPLOYEE/OFFICER, if applicable) _____	Signature	Date	APPLICANT <u>Lexington Furniture Company, Inc</u>	_____	ATTORNEY BY: <u>James G. Amato</u>	_____
Signature	Date						
APPLICANT <u>Lexington Furniture Company, Inc</u>	_____						
ATTORNEY BY: <u>James G. Amato</u>	_____						

McBRAYER, MCGINNIS, LESLIE & KIRKLAND PLLC

163 WEST SHORT STREET

SUITE 300

LEXINGTON, KENTUCKY 40507-1361

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 JOHN R. MCGINNIS
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 JAMES G. AMATO
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 CHRISTOPHER M. HILL
 LISA ENGLISH HINKLE
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 D. BARRY STILZ
 MARY WIS ESTES
 LUKE BENTLEY III
 PATRICK T. PADGETT
 MATTHEW W. BREETZ
 KELLY A. RANVIER
 R. STEPHEN MCGINNIS +
 JON A. WOODALL
 MARGARET M. YOUNG

* ALSO ADMITTED IN OHIO

** ALSO ADMITTED IN COLORADO

+ ALSO ADMITTED IN WEST VIRGINIA

October 11, 1996

WATSON CLAY (1908-1985)
OSCAR SAMMONS (1908-1985)

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DIRECTOR OF GOVERNMENTAL RELATIONS
 MIKE HELTON
 FRANKFORT OFFICE
 502-875-1176
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Chairman
 Lexington-Fayette County Urban
 Government Planning Commission
 200 East Main Street
 Lexington KY 40507
 Attn: Frank Thompson, Secretary

RE: **Zoning Ordinance Text Amendment**

Dear Chairman and Commission Members:

Please consider this letter as an application for a Zoning Ordinance Text Amendment relating to Mail Order Business in the Wholesale/Warehouse (B-4) Zone, and Light-Industrial (I-1) Zone.

Applicant: Lexington Furniture Company, Inc.
 1117 Winchester Road
 Lexington, KY 40505

Attorney: James G. Amato
 McBrayer, McGinnis, Leslie
 & Kirkland
 163 West Short Street, Ste. 300
 Lexington, KY 40507
 (606)231-8780

Requested change:

Suggestion for Zoning Ordinance Text Amendment

Add to Article 8-19 (B-4):

8-19(c) Accessory Uses:

6. Retail sale of new and used furniture, and household-related items such as antiques, fabrics, furnishings, glassware and china, when accessory to its storage, refinishing, repairing or upholstery on the same premises.

Add to Article 8-20 (I-1):

8-20(c) Accessory Uses:

10. Retail sale of new and used furniture, and household-related items such as antiques, fabrics, furnishings, glassware and china, when accessory to its storage, refinishing, repairing or upholstery on the same premises.

Exhibit "A"

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JUSTIFICATION OR REQUEST

Lexington Furniture Company, Inc. owns and operates a new furniture business at 1117 Winchester Road in Lexington, Kentucky in a Highway Service Business (B-3) Zone. The Applicant wishes to establish a new location in a Wholesale/Warehouse Business Zone (B-4) or Light Industrial Zone (I-1) Zone.

Due to advancement in various technologies, Lexington Furniture Company, Inc. finds itself in need of more warehouse storage/space, catalog sales and office space and display/design area to fulfill its mail order and computer-generated wholesale and retail business. These mixed uses are more appropriate in the (B-4) and (I-1) zones than the B-3 Zone for the following reasons:

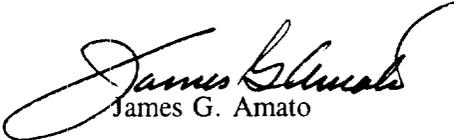
1. The Zoning Ordinance does not presently adequately recognize the unique nature of the variety of mail order businesses nor the mixture of warehouse, shipping, order taking, computer-generated sales, showroom and design/interior decorating services peculiar to retail sales of new furniture.
2. This mixture of uses can only occur in the commercial zones which do not ordinarily provide appropriate space opportunities for mail-order type retail operations which require warehouse, storage, wholesale and retail sales, showrooms, design/interior decorating facilities and order taking as well as docking, trucking and shipping areas.
3. Several mail Order businesses and similar mixes are presently located in (B-4) and (I-1) zones, including those large retail uses that are currently provided for in both zones such as hardware, appliances, plumbing, police supplies and many other categories of goods, merchandise and finished products.
4. The (B-4) and (I-1) zones are more appropriate for this mixture of Permitted and Accessory uses since shipping, trucking, warehousing and mail/computer/personal order-taking are crucial elements to this evolutionary and unique type of business.
5. There is no logical or practical zoning reason for the arbitrary exclusion of "new" to indicate what types of furniture may be sold at retail in the (B-4) and (I-1) zone.

Exhibit "B"

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6. An alternative method of correcting this designation of the types of furniture to be sold at retail in the (B-4) and (I-1) zones would be to delete the word "used" in Article 8-19(c)6. and 8-20(c)10. of the zoning Ordinances pertaining to furniture that may be sold at retail.

Respectfully submitted,


James G. Amato

STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT

ZOTA ⁹⁶⁻⁹~~91-9~~: AMENDMENT TO ARTICLES 8-19 & 8-20
SALE OF NEW FURNITURE IN THE B-4 & I-1 ZONES

REQUESTED BY: Lexington Furniture Company, Inc.

PROPOSED TEXT: (Text underlined indicates an addition to the Zoning Ordinance)

8-19(c) Accessory Uses (B-4 Zone)

6. Retail sale of new and used furniture, and household-related items, such as antiques, fabrics, fixtures, furnishings, glassware and china, when accessory to its storage, refinishing, repairing or upholstery on the same premises.

8-20(c) Accessory Uses (I-1 Zone)

10. Retail sale of new and used furniture, and household-related items, such as antiques, fabrics, fixtures, furnishings, glassware and china, when accessory to its storage, refinishing, repairing or upholstery on the same premises.

STAFF REVIEW:

The petitioner has requested this text amendment in order to allow the retail sale of new furniture in the wholesale and warehouse business (B-4) zone and the light industrial (I-1) zone.

Retail sales are currently restricted in the B-4 and I-1 zones. Only the sale of large items such as cars and trucks, mobile homes, contractor equipment, bikes, boats, building materials, and agricultural supplies are currently permitted. Furniture sales are currently allowed in the B-1, B-2, B-2A, B-2B, and B-3 zones.

Some aspects of a furniture business are currently allowed in the B-4 zone. Furniture storage, refinishing, repairing, and upholstering would be permitted as a B-4 use. These uses, along with furniture manufacturing and assembly are also possible in the I-1 zone. Furniture wholesaling, a furniture warehouse, and furniture mail-order businesses are also permitted in these zones. Sales showrooms occupying up to 30% of such a facility is also currently permitted in B-4 and I-1 as an accessory use.

In 1991, the staff researched the zoning ordinances of other communities in an attempt to compare their treatment of furniture and antique sales in light industrial and warehouse zones, as part of a text amendment proposal for the sale of antiques. The results of that effort was mixed. Of the 32 communities reviewed in 1991, ten (10) allowed furniture sales in industrial/warehouse zones, five (5) localities allowed it as an accessory use, three (3) permitted such sales as a conditional use, twelve (12) prohibited furniture retailing, and two (2) communities allowed the sale of antiques but prohibited the sale of new furniture.

The approach of Toledo, Ohio and Lubbock, Texas in allowing the sale of antiques but not new furniture sales in wholesale business and industrial zones appealed to the staff at that time. This approach explains the current accessory use language in the B-4 and I-1 zones. However, the staff knows of no new local business which has taken advantage of this provision of the Zoning Ordinance since its inception in 1991.

For this current text amendment, eight ordinances from North Carolina were reviewed. Half (Charlotte, Greensboro, Raleigh and Winston-Salem) allow furniture sales as a permitted use in industrial zones. Two ordinances (High Point and Wake Co.) only allow

this use with Board of Adjustment approval. Two communities (Fayetteville and Guilford Co.) prohibit this use in industrial/warehouse zones. North Carolina was chosen because of the prevalence of the furniture industry in that state.

Generally, retailing uses do not coincide with the intent of either the B-4 or I-1 zone. It is conceivable though, that a furniture business which stores, assembles, refinishes, or manufactures furniture could have a showroom sales area (up to 30% of the total floor area) and could presently locate in a B-4 or I-1 zone. Furniture sales are often found in large, warehouse-type structures in many areas.

Although the staff does not wish to encourage new retail uses in the wholesale business and light industrial zones, it is conceivable that a furniture store use could be a wise re-use of an older warehouse building. Conversely, not all B-4 and I-1 locations in the Urban Services Area would be favorable for furniture stores.

As suggested by the staff in 1991, regulating the retail sale of furniture as a conditional use in the B-4 and I-1 zone, subject to the scrutiny of the Board of Adjustment on a case-by-case basis, is a favorable limitation, especially to allow the expanded use requested by this petitioner. As such, it would also be consistent with the zoning regulations of High Point and Wake Co. North Carolina; Bakersfield, California; and Lowell, Massachusetts for this specific use.

STAFF PROPOSED TEXT: (Text underlined indicates an addition; text ~~dashed through~~ indicates a deletion.)

8-19(c) Accessory Uses (B-4 Zone)

~~6. Retail sale of used furniture, and household related items, such as antiques, fabrics, fixtures, furnishings, glassware and china, when accessory to its storage, refinishing, repairing or upholstery on the same premises.~~

(Re-number remaining accessory uses)

8-20(c) Accessory Uses (I-1 Zone)

~~10. Retail sale of used furniture, and household related items, such as antiques, fabrics, fixtures, furnishings, glassware and china, when accessory to its storage, refinishing, repairing or upholstery on the same premises.~~

8-19(d) Conditional Uses (B-4 Zone)

4. Retail sale of furniture, and household-related items, such as antiques, fabrics, fixtures, furnishings, glassware and china, when accessory to its storage, refinishing, repairing or upholstery on the same premises.

8-20(d) Conditional Uses (I-1 Zone)

17. Retail sale of furniture, and household-related items, such as antiques, fabrics, fixtures, furnishings, glassware and china, when accessory to its storage, refinishing, repairing or upholstery on the same premises.

The Staff Recommended: Approval of the staff proposed text, for the following reasons:

1. Retail sales of furniture as a conditional use is appropriate since the related uses of furniture storage, refinishing, repairing, and upholstery and mail-order businesses are already permitted uses in the B-4 and I-1 zones.
2. This amendment will set appropriate limits to this specific use, consistent with the practice of other cities in California, North Carolina and Massachusetts.

WLS/FT/ejh
10/31/96
November cases

C. ZONING ORDINANCE TEXT AMENDMENT

1. ZOTA 96-9: AMD. TO ARTICLES 8-19(C)6 AND 8-20(C)10; RETAIL SALE OF NEW FURNITURE AS ACCESSORY USE IN THE B-4 AND I-1 ZONES - a proposed text amendment to add the retail sale of new furniture as accessory to uses in the wholesale & warehouse (B-4) and light industrial (I-1) zones.

REQUESTED BY: Lexington Furniture Company, Inc.

PROPOSED TEXT: (Text underlined indicates an addition to the Zoning Ordinance)

8-19(c) Accessory Uses (B-4 Zone)

6. Retail sale of new and used furniture, and household-related items, such as antiques, fabrics, fixtures, furnishings, glassware and china, when accessory to its storage, refinishing, repairing or upholstery on the same premises.

8-20(c) Accessory Uses (I-1 Zone)

10. Retail sale of new and used furniture, and household-related items, such as antiques, fabrics, fixtures, furnishings, glassware and china, when accessory to its storage, refinishing, repairing or upholstery on the same premises.

STAFF PROPOSED TEXT: (Text underlined indicates an addition; text ~~dashed through~~ indicates a deletion.)

8-19(c) Accessory Uses (B-4 Zone)

- ~~6. Retail sale of used furniture, and household-related items, such as antiques, fabrics, fixtures, furnishings, glassware and china, when accessory to its storage, refinishing, repairing or upholstery on the same premises.~~

(Re-number remaining accessory uses)

8-20(c) Accessory Uses (I-1 Zone)

- ~~10. Retail sale of used furniture, and household-related items, such as antiques, fabrics, fixtures, furnishings, glassware and china, when accessory to its storage, refinishing, repairing or upholstery on the same premises.~~

8-19(d) Conditional Uses (B-4 Zone)

4. Retail sale of furniture, and household-related items, such as antiques, fabrics, fixtures, furnishings, glassware and china, when accessory to its storage, refinishing, repairing or upholstery on the same premises.

8-20(d) Conditional Uses (I-1 Zone)

17. Retail sale of furniture, and household-related items, such as antiques, fabrics, fixtures, furnishings, glassware and china, when accessory to its storage, refinishing, repairing or upholstery on the same premises.

The Staff Recommended: Approval of the staff proposed text, for the following reasons:

1. Retail sales of furniture as a conditional use is appropriate since the related uses of furniture storage, refinishing, repairing, and upholstery and mail-order businesses are already permitted uses in the B-4 and I-1 zones.
2. This amendment will set appropriate limits to this specific use, consistent with the practice of other cities in California, North Carolina and Massachusetts.

Representation - Mr. James Amato, attorney.

Staff/Committee Reports - The report on this text amendment petition was presented by Mr. Sallee. (A copy of the staff report is attached as an appendix to these minutes.) He noted that the staff

* - Denotes date by which Commission must either approve or disapprove plan.

** - Denotes at least a portion of the property contains an environmentally sensitive area.

report was incorrectly numbered, and the correct number for this ZOTA was 96-9. The text amendment had been requested by the Lexington Furniture Co.

Mr. Sallee stated that the proposed amendment would alter the accessory uses in the B-4 and I-1 zones to allow the sale of new furniture. He recalled that these two zones were expanded a few years ago to allow sale of antiques or used furniture in that zone as an accessory use. He pointed out that some aspects of a furniture store were already permitted in these zones. These included storage, refinishing, and upholstery. The Zoning Ordinance also allows for designated sales areas of up to 30% of the floor area. Therefore, the proposed text amendment would be an expansion in the scope of existing accessory uses.

Mr. Sallee stated that in 1991 the staff had reviewed a number of zoning ordinances from around the country in preparation for the text amendment that allowed antique furniture sales as an accessory use in the subject zones. He had updated his research for this proposed amendment, focussing mainly on North Carolina ordinances, since the furniture industry is strong in that state. During both reviews, the staff had found mixed results, and these were reported in the staff report. Two out of eight North Carolina prohibit such sales, two others allowed them as conditional uses, and the other four cities listed them as permitted uses. Therefore, the more recent review had given no clear direction as to how this use should be treated.

Mr. Sallee stated that in 1991 the Planning staff had believed that the sale of used furniture as an accessory to other permitted uses, or as a conditional use, was reasonable in B-4 and I-1 zones. Eventually, an amendment to make this an accessory use was approved. At the present time, the staff would be comfortable with expanding this use to include sales of new furniture if it were more controlled. Therefore, the staff had recommended making it a conditional use rather than leaving it an accessory use. The staff did not believe that all I-1 locations should be available, or would be appropriate, for establishments for the sale of new furniture. Making this a conditional use would require Board of Adjustment approval, and this would allow review of the appropriateness of proposed locations for that use.

Therefore, the staff did not agree with the text amendment proposed by the petitioner. However, an alternative amendment was offered that would allow retail sale as a conditional use requiring BOA approval. This amendment would be accomplished by eliminating the current accessory use allowing sale of used furniture, and making that provision a conditional use, expanding it to include new furniture sales.

The staff had recommended approval of the staff's proposed text amendment alternative for two reasons listed on the agenda and staff report.

Petitioner's Presentation - Mr. James Amato, attorney, stated the applicant's agreement with the staff's recommendation because it was a reasonable solution to this issue. He noted that the Commission had previously considered and approved retail sales of used furniture in these zones. He explained that technology had brought about the request for this change. Furniture stores now have Web sites on the Internet and get orders from that source, from e-mail, and from telephone orders. The company would not necessarily have many walk-in customers purchasing the furniture on-site. He noted that much of the furniture is shipped directly from the factory to the customer and is never in a store.

Objections - There were no objections.

Action - A motion was made by Mr. Harper, seconded by Mr. Kelly, and carried 7-1 (Lucas opposed; Cooper, Gregg, Vose absent), to approve the staff alternative text for ZOTA 96-9: AMD. to Articles 8-19 and 8-20; Retail Sale of New Furniture in the B-4 and I-1 Zones, providing that this become a conditional use in those zones, for the reasons listed by the staff.

* - Denotes date by which Commission must either approve or disapprove plan.

** - Denotes at least a portion of the property contains an environmentally sensitive area.