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Article 16. Two Family Detached Dwelling (Petition - Maurianne Adams et al)

To see if the Town will vote to amend Section 3.321 of the Amherst Zoning Bylaw by adding the language in **boldface** and by deleting the language in ~~strikethrough~~ as follows:

3.321 Two-family detached dwelling

In all districts, the Special Permit Granting Authority or permit Granting Board, as applicable, shall apply the provisions of Section 3.2040 and 3.2041 to any construction, ~~renovation or expansion resulting in the creation~~ of a new two family detached dwelling ~~or the addition of a single new dwelling unit to an existing single family residence such that a two family dwelling is created.~~ **Any renovation or expansion of or addition to an existing dwelling that results in the creation of a two-family dwelling shall be permitted under Section 3.3241 or 5.011 as applicable.**

Recommendation

The Planning Board made two recommendations with regard to Article 16. The Board voted, 7-1, to recommend that Town Meeting dismiss or defeat Article 16 if either Article 13 or Article 14 have been adopted, because the provisions of Article 16 conflict with the intentions of both Planning Board articles.

However, if both Articles 13 and 14 have failed, then the Planning Board recommends that Town Meeting adopt Article 16, with the removal of the phrase “or 5.011,” as an interim step toward the regulation of duplexes.

Background

Article 16 is a petition article submitted by citizens concerned with the conversion of existing single family homes to two family dwellings used as rentals. The petitioners indicate that the

primary purpose of Article 16 was to change the permit requirement for a new two family dwellings in their own zoning district—General Residence (R-G)—from a by-right Site Plan Review (SPR) approval to a Special Permit (SP).

However, instead of simply proposing that the permit requirement be changed directly in the Use Chart from SPR to SP—what Article 13 proposes—Article 16 instead tries to obtain a Special Permit requirement for two family dwellings by reclassifying those created through expansion or addition as converted dwellings (Section 3.3241) or as supplemental apartments (Section 5.011).

There are several problems with this approach. Article 16 as originally proposed is a much more elaborate and extensive change than is needed to accomplish its stated purpose. It could create confusion within the Bylaw and it would conflict with the revised definitions of duplexes and converted dwellings proposed by the Planning Board under Articles 13 and 14.

Article 16 would have the following effects:

- Encouraging Demolitions - Article 16 does not change the permit requirement for duplexes built from scratch as new construction, which would still be allowed by right in the R-G District through Site Plan Review approval. This could have the unintended consequence of encouraging the demolition of existing buildings in order to create cleared sites for brand new duplexes that could be built by right through a Site Plan Review (SPR) approval.
- New Construction Only – Article 16 redefine two family detached dwellings (duplexes) so that the use category includes only duplexes resulting from brand new construction. If Article 16 is adopted, all two family dwellings resulting from renovation and expansion would be regulated under different use categories.
- Blurs the Difference Between Duplexes and Converted Dwellings – Because Article 16 reclassifies “Any renovation or expansion of or addition to an existing dwelling that results in the creation of a two family dwelling” as a converted dwelling or a supplemental apartment (see next bullet), it blurs the distinction between duplexes and converted dwellings.

Under Articles 13 and 14, two family detached dwellings/duplexes will be mostly (but not exclusively) the result of new construction, whereas converted dwellings containing

two units will be created predominantly through the conversion of existing structures.

By forcing two family dwellings resulting from significant additions—including additions consisting of a whole new dwelling unit attached to an existing structure—to be regulated as converted dwellings, Article 16 muddies and confuses the purpose of converted dwellings. Including a residential use that can double in size (or more) as a result of extensive new construction as a “converted dwelling” runs counter to the purpose of converted dwellings as a separate use category, which is to help to preserve patterns of existing architecture, building mass, neighborhood fabric and character.

- **Principal Uses ≠ Accessory Uses** - By referencing Section 5.011, Article 16 confuses “principal” uses with “accessory” uses. In the Zoning Bylaw, two family detached dwellings (duplexes) and converted dwellings are principal uses. They are the dominant, “principal” use of a property. Under Section 5.011, however, the principal use is a single family dwelling that includes a supplemental apartment that is by definition subordinate and “accessory” to the single family dwelling. A supplemental apartment is limited in size (max. 800-900 sq. ft.), and does not require any additional lot area in order to exist. It makes no sense to try to regulate a two unit residential use under a single family use category.

Public Hearings

The Planning Board held a public hearing on Article 18 on Wednesday, November 7.

Following a presentation by the petitioners, public comment, and further discussion, the Planning Board voted, 7-1, to recommend that Town Meeting dismiss or defeat Article 16 if either Article 13 or Article 14 have been adopted, because the provisions of Article 16 conflict with the intentions of both Planning Board articles.

However, if both Article 13 and 14 have failed, then the Planning Board recommends that Town Meeting adopt Article 16, with the removal of the phrase “or 5.011,” as an interim step toward the regulation of duplexes.