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Article 17. **Converted Dwelling Standards and Conditions (Petition - Maurianne Adams et al)**

To see if the Town will vote to amend Section 3.3241 of the Amherst Zoning Bylaw by adding the words, phrases, sentences or section in **boldface** and by deleting the words, phrases, sentences, or section in ~~strike through~~ as follows:

~ SEE WARRANT ~

Recommendation

The Planning Board voted 6-2, to recommend that Town Meeting refer Article 17 back to the Board for further work. While the Board agrees that in many circumstances owner occupancy is an appropriate requirement for a multi-unit residential rental property, Article 17 establishes owner occupancy only as an absolute and inflexible requirement, without recourse to the exercise of discretion by a permitting body, or the ability to waive or modify that requirement. The Planning Board would like more time to work on examining owner occupancy as an option so that it better reflects the complexity and variability of Amherst's housing.

As of the time of this report, the petitioners have indicated that most of those involved were willing to move Article 17 without the changes proposed to Standards and Conditions 10. and 12. Those present stated their intent to go forward with the amendments to Standard and Condition 5., which seeks to require owner occupancy in all cases. Because there is no definitive statement about what the petitioners will move, this report covers all of the provisions of Article 17 as it appears on the warrant.

Background

Article 17 is a petition article submitted by citizens concerned with the conversion of existing single family homes to multi-unit rentals.

Requires Owner-Occupancy In All Cases - In an attempt to discourage new, non-owner occupied rental properties, Article 17 would amend Standards and Conditions 1. and 5. to

require owner occupancy of all converted dwellings, regardless of their location, the number of dwelling units involved, or the circumstances of the specific application. The petitioners believe that this will ensure stronger control over tenant behavior and will help make mixed neighborhoods containing student rentals more viable as places to live.

The Planning Board does not agree that owner occupancy should be required for all converted dwellings, and is further concerned that there could be unintended consequences from adding a blanket requirement for owner occupancy on top of the current requirement for a Special Permit, including the following:

- **Not Really Needed** – Under the Special Permit already required for converted dwellings in all residential districts, the Zoning Board of Appeals already has the authority to impose owner occupancy (and a past history of doing so) as a requirement for rental properties when it determines that owner occupancy is called for, even though there is no specific requirement for owner occupancy in the Zoning Bylaw.
- **Discouraging Renovations** – Adding owner occupancy as a requirement on top of the existing Special Permit would discourage property owners from trying to convert and reuse large older buildings under this use category, which is designed to help preserve existing historic structures and architectural fabric.
- **Impacts on Institutional Owners** – Requiring owner occupancy is not possible when the owner is an institution. Amherst College has recently embarked on a program of converting a number of its large older single family homes previously rented to faculty into two or more smaller units, in order to better be able to provide housing for new faculty. Affordable housing non-profit agencies might experience the same problem.
- **Impacts on Supply of Affordable Rentals** - Requiring owner occupancy doesn't just affect student rentals. It reduces the options for affordable rental units for local families and non-student households.
- **Encouraging Demolition** - Property speculators seeking an easier permit path to the creation of rental units could simply pursue demolition of the large older historic homes this use category represents, having exactly the opposite effect intended under both Article 14 and 17. On a cleared site, a property owner could pursue construction of a rental use in one or more structures (duplex, apartments, town houses) that might require a Special Permit, but no owner occupancy.

Screening Parking Areas - Article 17 adds a redundant requirement for the screening of parking areas. Such screening is already required under Section 7.112 of the Zoning Bylaw.

Rigid, Counter-Productive Enforcement - Finally, Article 17 adds a new Condition 12, which seeks to dictate the specific type and sequence of enforcement actions to be taken by Town zoning enforcement personnel if a property is in violation of the proposed owner occupancy requirement. In its attempt to force immediately punitive solutions on often complex situations, Condition 12 takes discretion away from enforcement personnel, with mixed and sometimes counter-productive results:

- **Ignores Existing Enforcement Procedure** – Article 17 does not refer to or seek to integrate the provisions of proposed new Condition 12 with the enforcement process established under Section 11.4, Enforcement, of the Zoning Bylaw, which sets out in detail the process by which the Building Commissioner, acting as Zoning Enforcement Officer, proceeds when acting on a violation of the Zoning Bylaw. In so doing, Article 17 undermines the validity of the enforcement it seeks to enhance.
- **Mandating a Cease & Desist Order** - Article 17 seeks to mandate automatic issuance of a cease and desist order, whenever a determination has been made that a violation of the owner occupancy requirement has occurred. It does so in the hope that owners of properties found to be in violation would be forced to comply more rapidly. In fact, Section 11.42 of the Bylaw already establishes this requirement, but does so while acknowledging the discretion of enforcement officials. Quick and automatically punitive actions are not always practicable or desirable. Many owners facing an issued cease and desist order would, instead of complying, quickly file an appeal with the Zoning Board of Appeals—to buy time in which to try to come into compliance without accumulating financial penalties. If their appeal failed and compliance was still an issue, the owner could then take the matter to court. During appeals and court consideration, enforcement is suspended.

Enforcement personnel need the ability to use discretion and engage in negotiation. Too inflexible or stringent a policy of enforcement can add significant time and cost to the process for all involved. In many cases it may delay rather than facilitate compliance. Instead of dealing directly with violations, Town enforcement personnel could end up spending hours at night meetings at appeals hearings or spending their afternoons in court.

- **Vacating the Premises** - Article 17 seeks to mandate that rental units in a converted dwelling found to be in violation of the owner occupancy requirement must be vacated “by midnight of the last day of the calendar month following the taking effect of the order.”

There are at least two problems with this:

1. **Zoning Cannot Compel Evictions** - Local zoning cannot directly require that dwelling units be vacated. Evictions are regulated under separate state law, and the parties

involved are the landlord and the tenants, not local municipalities. A town can declare the way a residential rental use is being operated invalid under zoning, and can order the property owner to cease operating the use. But what follows is the landlord's responsibility. That's not the same as the Town directly requiring evictions.

Even if it were possible to compel evictions through zoning, using tenants' housing as a club with which to punish landlords is neither an effective nor an ethical way to encourage landlords to comply with local housing regulations. Fines and other financial disincentives can have a much more direct and effective impact, without depriving tenants of housing.

2. Inconsistent Timing – Setting aside the invalidity of the method, exactly when the order to cease and desist would 'take effect' could vary widely. The order could take effect on the day before the last day of the month—leaving only one day in which to comply. Or it could take effect on the first day of the next month (the day after the last day of the month), leaving an entire month to comply. That does not contribute to an effective or fair system of compliance.

Re-Occupation Requiring a Surety Bond - Finally, Article 17 seeks to prohibit re-occupation of vacated units until owner occupancy has been re-established and a surety bond has been posted equal to the cost of "the issuance and defense of said cease and desist order." This would presumably be in addition to any fines associated with the violation.

- The Wrong Tool – As has been indicated, for several reasons, forcing evictions is not a viable method for enforcement of zoning regulations. Since the Town cannot mandate evictions through zoning, trying to regulate how it might control "re-occupation" following evictions becomes moot.
- Surety Bonds - Town Counsel indicates that the Town cannot require the posting of a bond to cover hypothetical future legal costs. Charging citizens or property owners for the cost of responses by Town enforcement or emergency response personnel is allowed under Massachusetts law, but such costs are typically assessed after the responses have occurred, when the Town's actual costs are known. Even if the rest of the proposed method was valid, the use of an "anticipatory" bond of the kind proposed would be of questionable fairness or effectiveness as a tool under zoning.

However, once a foundation of data had been developed regarding average responses to rental properties in Amherst, a surety or bond of some kind might be a tool to consider as part of a system of rental regulations under the Town of Amherst General By-Laws.

Public Hearing

The Planning Board held a public hearing on Article 17 on Wednesday, November 7. The petitioners indicated at that point that most of them were willing to move Article 17 without the changes proposed to Standards and Conditions 10. and 12. They did intend, at a minimum, to go forward with the amendments to Standards and Condition 5. requiring owner occupancy in all cases. There was no definitive statement regarding exactly what would be moved.

It was noted that under the current Special Permit requirement, the Zoning Board of Appeals can and does impose owner occupancy as a condition of a permit, even though that option is not explicitly set forth in the language. Further, it was noted that Article 17 would make all legally operating converted dwellings not currently owner occupied non-conforming uses, which would be grandfathered under this change.

After extended public comment and further discussion, the Planning Board voted 6-2 to recommend that Town Meeting refer Article 17 back to the Board for further work.

The Planning Board supports and shares the petitioners' goal of exerting greater control over tenant behaviors in order to make residential neighborhoods viable. But Article 17 involves many unintended consequences. While the Planning Board supports finding a way to integrate owner occupancy more fully into the permit requirements for converted dwellings, it does not support owner occupancy as an inflexible blanket requirement, without any provision for waiver or modification.