



**PLANNING BOARD**

**Report to Town Meeting**

**ARTICLE 9 RECREATION FACILITIES**

---

To see if the Town will amend Sections 3.315, 4.570, 10.397, 11.2403, and Article 12 of the Zoning Bylaw, by adding the language in bold italics, as follows:

~ *SEE ATTACHMENT* ~

---

Recommendation

The Planning Board voted 5-0-1 to recommend that Town Meeting adopt Article 9.

Background

Article 9 is a response to elements of a petition article (Article 30) referred back to the Planning Board and Leisure Services and Supplemental Education (LSSE) Commission by the 2008 Annual Town Meeting.

Article 9 would do several things:

- Create definitions for “recreation” and certain categories of recreation (active, outdoor, and passive) that are referred to in the Zoning Bylaw, to help guide permit-granting bodies.
- Create a definition for “usable open space” for recreation. Providing such recreation space is currently required for certain kinds of residential development, but not for others.
- Require that residential developments of four or more units provide a minimum of 1,000 sq. ft. of usable open space per dwelling unit for recreation. This would principally affect converted dwellings, apartments, and town houses.
- Allow the permit-granting body to determine that up to 50% of this requirement has been met when there is an existing recreational facility within 1,000 feet of the development.
- Clarify the title of an existing private outdoor recreation use.
- Remove a contradictory provision in an existing “usable open space” regulation for Open Space Community Developments (OSCDs).

None of the provisions of Article 9 address frontage lots or standard subdivision development, which are by-right development methods protected under state law.

*Payment In Lieu* - What Article 9 does not do is try to create an option for residential developers to make a payment in lieu of directly providing recreational facilities. That possibility is still being studied, and the Planning Board and LSSE Commission will work together on a further possible amendment for the 2009 Annual Town Meeting.

*New Definitions* – The Zoning Bylaw currently refers to various kinds of recreation, and requires “usable open space” for active and/or passive recreation several kinds of residential development methods. But the Bylaw has never provided any definitions for these terms. The definitions proposed under Article 9 are long and somewhat involved, but that is in an attempt to clearly frame what these terms mean for the permit-granting bodies that have to interpret and apply the terms to real-world developments.

Example: Under the current zoning regulations, the Bylaw prohibits the use of wetlands as usable open space for a couple of kinds of development methods (cluster developments and PURDS), but does not say that wetlands can’t be counted as usable open space for other multi-unit residential uses (converted dwellings, apartments and town houses). So a developer proposing to build converted dwellings, apartments or town houses could argue that any wetlands on their property should be able to count for this purpose. In the absence of a definition, the permit-granting body would have to try to interpret the existing language of the Bylaw and decide whether or not wetlands should be included. Wetlands can provide passive recreation in the form of nature or wildlife observation (from a distance), but environmental regulations prevent them from being developed for active recreation. Accordingly, the proposed new definition of usable open space will allow wetlands to count for up to 25 percent (25%) of the total required usable open space for these residential uses.

*Requiring Open Space for Recreation* – Currently, developers are required to provide minimum amounts of “usable open space” for active and/or passive recreation in cluster developments, Planned Unit Residential Developments (PURDs), and Open Space Community Developments (OSCDs), at the following rates:

Cluster Development	2,000 sq. ft./unit
Planned Unit Residential Development	1,000 sq. ft./unit
Open Space Community Development	2,000 sq. ft./unit

These development methods are most commonly used in outlying zoning districts—Neighborhood Residence (R-N), Outlying Residence (R-O), and Low Density Residence (R-LD). There is no similar requirement to provide recreational space for other important kinds of multi-unit residential development—converted dwellings, apartments, or town houses. Apartments and town houses are not permitted in the outlying zoning districts, and converted dwellings can total no more than four (4) units in those districts.

Article 9 would require that these multi-unit residential uses also provide usable open space when they involve a total of four or more units. Properties in the densest areas of Amherst—the downtown General Business (B-G) and outlying Village Center Business (B-VC) districts—would be exempt from this requirement. In these areas, there are existing public green spaces, parks, and cultural destinations, and the priority is for denser, more compact development. The result is that this requirement would have its

greatest effect in the R-G and R-VC Districts, where converted dwellings, apartments and town houses are permitted and most commonly occur.

*Allowing Existing Recreation to Count* – Zoning regulations need to recognize that residents of the new development will use nearby existing recreational facilities—school ball fields, playgrounds, etc.—and that those facilities will absorb some portion of the recreational need generated by the development. Article 9 would allow (but does not require) permit-granting bodies to count up to 50% of the usable open space as having been met by existing nearby recreation facilities. Permit-granting bodies can use their discretion. If, for instance, compelling evidence was presented at a permit public hearing indicating that the existing nearby recreation facilities were already over-burdened, then the permit-granting body could choose to require that a proposed new development meet all of its own needs for usable open space for recreation on-site.

*What's in a Name?* – Section 3.315, Outdoor recreational use, is a category in the Use Chart of the Zoning Bylaw that regulates private outdoor recreation operated for commercial purposes—anything from golf courses to go-cart tracks to batting cages to skeet/trap ranges. This use category occurs in the Extensive Uses section of the Use Chart, which lists numerous ‘extensive’ private uses of land, mostly commercial farming activities. This private recreation use is permitted by Special Permit only in selected outlying residential zoning districts or business districts. The problem is that nothing in its title informs citizens that it is referring to a private commercial use, rather than a public recreation use. Non-profit and public recreational uses are regulated under entirely different use categories in a different part of the Use Chart (Institutional Uses):

- Section 3.330 - Non-profit educational institution, including any educational use of land . . .
- Section 3.335 - Public park, playground, or other public recreation facility.

By amending the title of Section 3.315 to read “Outdoor *commercial* recreation use”, the private, for-profit nature of this use category will be made clearer, and confusion will be avoided.

*Consistency* – Currently, the following two sentences in Section 4.570 regulate the way in which usable open space is to be provided in Open Space Community Developments (OSCDs):

**Usable open space shall not include** parking areas, roadways, sidewalks or **land within wetlands** as determined by the Conservation Commission (except as hereinafter provided). **Up to 40 percent** of total usable open space **may be located in** an FPC District and/or **wetlands**, as appropriate to the intended recreation use(s), in accordance with the provisions of Section 3.22, and as permitted by the Conservation Commission. [emphasis added]

“Usable open space shall not include . . . wetlands” and then “up to 40 percent . . . may be located in . . . wetlands”—these two sentences contradict one another. In cluster developments and PURDs, using wetlands as usable open space is prohibited. Article 9 would make the OSCD requirements consistent with the others.

*Reinforcing the Settlement Pattern* - Cluster developments, PURDs and OSCDs are residential development methods used primarily in outlying parts of Amherst where sufficient open land area still exists to create them. By prohibiting the use of wetlands for usable open space in these areas, required

recreation space would have to be provided on dry upland, leaving more open area undisturbed when residential development occurs.

Through the amendments to Sections 10.397 and 11.2403, converted dwellings, apartments, and town houses of more than four (4) units will have to provide usable open space. These residential land uses are not permitted in outlying residential zoning districts (R-N, R-O, R-LD), and occur most frequently in existing settled centers and neighborhoods, principally the R-G and R-VC districts, where greater residential density is desired. Allowing some modest portion (25%) of any existing wetlands in these areas to count as passive recreation space and recognizing the contribution of nearby recreation facilities will mitigate the impact of the new usable open space requirement on the density of proposed new residential development in these areas.

In summary, Article 9 will help the provision of new recreation facilities in Amherst to keep pace with the recreation needs of an increasing population, and will help ensure that the regulation of recreation uses under Amherst's zoning is clear and consistent.

#### Public Hearing

The Planning Board held a public hearing on Article 9 on Wednesday, October 15. After hearing from the public and subsequent discussion, the Planning Board voted 5-0-1 to recommend that Town Meeting adopt Article 9.

## ATTACHMENT – ARTICLE 9

To see if the Town will amend Sections 3.315, 4.570, 10.397, 11.2403, and Article 12 of the Zoning Bylaw, by adding the language in *bold italics*, as follows:

**A. Amend Article 12 by adding the following language as Section 12.27, and renumbering the remaining sections as appropriate:**

12.27 *Recreation: The refreshment of body and mind through active or passive forms of play, amusement, engaged study, contemplation or relaxation.*

*12.270 Recreation, Active: Indoor or outdoor leisure activity involving the physically active use of the body, whether undertaken by individuals (hiking, running, bicycling, skiing, climbing, etc.) or involving organized participatory activity with others, specialized equipment, and occurring at prescribed sites, fields, courses, structures, or buildings developed or improved for that purpose. Active recreation uses include but are not limited to golf courses, playgrounds, tot lots, skateboarding parks, courts for tennis and other court games, swimming pools, and fields for team sports such as baseball, soccer, basketball, football, lacrosse, Ultimate Frisbee, and similar activities. Active recreation may involve motorized or non-motorized vehicles.*

*12.271 Recreation, Outdoor: Leisure activity which may be either active or passive recreation, occurring outdoors. Outdoor recreation uses may be either commercial or non-commercial in nature. Outdoor recreational uses may involve either minimal or extensive improvements or development of sites, structures, and buildings, and may include outdoor amusement facilities, fields, rides, racing or riding tracks, campground facilities, golf courses, miniature golf facilities, shooting ranges, hunting or fishing preserves, and similar uses. Non-commercial outdoor recreation uses include but are not limited to hiking, camping, bicycling, bird watching and other nature study, rock-climbing, boating, horseback riding, skiing, snowmobiling, picnicking, etc. For the purposes of this Bylaw, outdoor recreation shall be considered to include traditional consumptive forms of outdoor recreation including but not limited to hunting, fishing, trapping, gathering, and similar activities.*

*12.272 Recreation, Passive: Leisure activity involving moderate physical activity, the use of improved or unimproved sites, structures, or buildings, and which may involve observation of nature or other study. Examples include but are not limited to seating areas, picnicking, hiking, bird watching or other nature study, and similar uses.*

**B. Amend Article 12 by adding the following language as Section 12.38 (or the appropriate section in alphabetical order), and renumbering the remaining sections as appropriate:**

**12.38 Usable Open Space:** *Open land, including but not limited to required common land, that is provided, improved and maintained for active or passive recreation in association with residential uses or development methods under this Bylaw, and which is accessible for the use of all residents of a residential use or development, and/or members of the public. Usable open space shall be contiguous areas of sufficient size to support their proposed use(s), and may be developed and available for play areas, seating or picnicking areas, tot lots, gardens, off-road trails (including but not limited to hiking, jogging, bridle and bicycle trails, as well as those paths and easements which provide access or connection to such trails, regardless of location), ball or playing fields, basketball or tennis courts or similar facilities as are appropriate. Usable open space shall not include parking areas, roadways, sidewalks, private yards or land within wetlands as determined by the Conservation Commission, except as hereinafter provided, and may include areas that are substantially undeveloped and free of structures. Except as may be otherwise provided for in this Bylaw, undeveloped land areas (ex., wetlands) that are inaccessible on foot or otherwise may constitute no more than twenty-five percent (25%) of the total area of usable open space provided for the purpose of any permit under this Bylaw.*

**C. Amend Sections 10.397 and 11.2403, as follows**

10.397 The proposal provides adequate recreational facilities, open space and amenities for the proposed use. *Except in the B-G and B-VC districts, or as may be otherwise required in this Bylaw, all residential uses or developments containing a total of four or more dwelling units shall provide a minimum of 1,000 square feet of usable open space for active or passive recreation per dwelling unit. The Special Permit Granting Authority may allow up to fifty percent (50%) of this requirement to be met by existing active or passive off-site recreational facilities located within 1,000 feet of the subject property and capable of being readily and safely accessed on foot.*

11.2403 Provision of adequate recreational facilities, open space and amenities. *Except in the B-G and B-VC districts, or as may be otherwise required in this Bylaw, all residential uses or developments containing a total of four or more dwelling units shall provide a minimum of 1,000 square feet of usable open space for active or passive recreation per dwelling unit. The Permit Granting Board may allow up to fifty percent (50%) of this requirement to be met by existing active or passive off-site recreational facilities located within 1,000 feet of the subject property and capable of being readily and safely accessed on foot.*

**D. Amend the title of Section 3.315 to read:**

3.315 Outdoor *commercial* recreational use

**E. Amend Section 4.570 by removing the phrase “and/or wetlands” from the last sentence.**