



PLANNING BOARD

Report to Town Meeting

**Article 33. Non-Conforming Uses and Structures  
(Planning Board)**

To see if the Town will vote to amend Section 9.2, Non-Conforming Uses and Structures, by deleting the ~~lined-out~~ language and adding the language in ***bold italics***, as follows:

~ SEE WARRANT LANGUAGE ~

**Recommendation**

The Planning Board voted unanimously 7-0 to recommend that Town Meeting adopt Article 33.

**Background**

Article 33 was originally requested by the Building Commissioner and Planning Department staff, in an effort to remove several problems of interpretation surrounding the permitting of non-conforming structures, particularly in mixed use business districts.

**Problem #1 – Structural Alteration?** The current language of the Bylaw talks about not allowing a non-conforming building to be “structurally altered”, but doesn’t say what structural alteration consists of.

**Solution:** An amendment to Section 9.20 defines what does and does not constitute a “structural alteration” to a dimensionally non-conforming building. The new definition would specify that structural alterations are those which affect the exterior of a building, such that interior alterations, even if they were “structural” in nature from an engineering standpoint, would not constitute an alteration of the exterior non-conformity of the building and so would not require a separate permit to undertake.

**Problem #2 – Most Buildings in Amherst’s Older Centers Are Non-Conforming.**

Amherst’s historic Town center and village centers were built long before zoning arrived, and most buildings do not conform to the Zoning Bylaw’s dimensional regulations. For many years, a series of Building Commissioners dealt with this issue by ignoring non-conformities when

proposed changes would have no effect on what was non-conforming about a property or building.

But in residential neighborhoods, where neighbors often care a great deal about changes in their vicinity, Building Commissioners frequently required Special Permits to allow even minor changes that had no impact on what might be non-conforming about a building. Several years ago, Town Meeting adopted a series of amendments to Section 9.200 allowing the Building Commissioner as Zoning Enforcement Officer to permit selected kinds of changes to single and two family dwellings that were dimensionally non-conforming, when those changes met one of three conditions regarding their non-conformity.

The disparity between the way the Town has dealt with changes to non-conforming buildings in residential neighborhoods and mixed use centers raises issues of consistency and fairness.

**Solution:** Article 33 amends Section 9.200 to extend to non-conforming buildings in mixed use centers the same allowances available to single family and two family dwellings in residential neighborhoods. This would allow the Building Commissioner to grant permission for minor changes to buildings not affecting or exacerbating non-conforming conditions to go forward without the need for a Special Permit. It would make the way the Town deals with these changes consistent and fair.

**Problem #3 – The Current Language Could Require Applicants to Go Before Two Boards to Get One Permit.** In some cases, a change to a non-conforming building could be associated with a new use that requires Site Plan Review (SPR) approval from the Planning Board. Even if the proposed change did not affect the non-conforming dimensions, it might still require a Special Permit from the Zoning Board of Appeals to address the fact that a non-conforming building is being changed. Town Meeting has for many years adopted amendments to the Zoning Bylaw specifically to avoid requiring applicants to appear before two boards (who might disagree with one another) in order to get a valid zoning permit to operate their proposed use.

**Solutions:** New Section 9.201 would allow new uses and expansions of existing uses to occur in dimensionally non-conforming buildings under their normally required permit (Site Plan Review approval or a Special Permit), but would relieve those uses of the need for an additional Special Permit addressing the non-conformity if no exterior change was occurring which affected the non-conformity.

**Problem #4 – A Change to a New Non-Conforming Use Could Require Two Permits.** If a building is non-conforming because of its dimensions or those of its lot, any use of the property

is also considered to be non-conforming, even if it's allowed by right in the zoning district. Any change from one non-conforming use to another non-conforming use currently requires a the Zoning Board of Appeals to determine whether or not the new use "not substantially more detrimental to the neighborhood" under a Special Permit.

But if the new use being proposed would ordinarily require a Site Plan Review approval from the Planning Board, the applicant could again end up having to go to two boards in order to get zoning permission for their new use, a situation Town Meeting has for years been amending the Zoning Bylaw to prevent.

**Solution:** The amendments proposed to Section 9.22 would allow whichever board is issuing the permit for the use to also issue the Special Permit for the change from one non-conforming use to another, on the basis of whether or not the new non-conforming use was "more substantially detrimental to the neighborhood" than the existing use.

So, in situations where the proposed use requires Site Plan Review approval, the Planning Board would hold a joint public hearing and act on both the permit (SPR) for the proposed use and the Special Permit allowing the change from one non-conforming use to another.

In situations where the proposed use itself requires a Special Permit, the Zoning Board of Appeals would be responsible for acting on both the permit for the use and the Special Permit allowing the change (and would likely collapse them into one Special Permit addressing both).

Where no other zoning permit was required for the new use, the Zoning Board of Appeals would issue the Special Permit allowing the change from one non-conforming use to another.

**Public Hearing**

The Planning Board held a public hearing on Article 33 on Wednesday, March 6. The Building Commissioner presented the reasons underlying his request, noting that the amendments would prevent applicants from having to go to two different boards for the same use, and could significantly reduce the length of the permit process for new uses where no change in a non-conforming condition was being proposed. Board members noted that there was no reduction in the public review required for proposed changes, and that avoiding a requirement where applicants had to appear before two boards was better public process.

There was no public comment. After further discussion, the Planning Board voted unanimously 8-0 to recommend that Town Meeting adopt Article 33.