



PLANNING BOARD

Report to Town Meeting

**ARTICLE 24 NON-PROFIT USES
(Planning Board)**

To see if the Town will amend Section 3.330 of the Zoning Bylaw, by deleting the ~~lined-out~~ language, adding the language in ***bold italics***, and reorganizing it as follows:

~ SEE ATTACHMENT ~

Recommendation

The Planning Board voted 6-0-2 (Barberet & Crouner abstaining) to recommend that Town Meeting adopt this article.

Background

Section 3.3., Use Classification & Standards, of the Zoning Bylaw attempts to describe all of the possible uses of land in Amherst. Not surprisingly, from time to time, gaps are found in the use categories listed there. In the absence of an existing classification for a specific use, the Bylaw requires the Building Commissioner (Zoning Enforcement Officer) to place a proposed use into the category to which it is most similar, and to regulate it under that category.

Article 24 seeks to add a missing use category for non-profit human service uses that are not educational or religious in nature. This gap came to light as a result of the Amherst Survival Center's efforts to find a new location for its operations.

Currently, the Zoning Bylaw contains Section 3.330, which regulates non-profit educational or religious uses. These uses correspond with a range of uses protected under MGL Chapter 40A, Section 3, commonly known as the "Dover Amendment." These uses must be allowed by-right in all zoning districts.

The proposed new use category would address non-profit human service uses which are neither educational nor religious in nature. Because these do not fit within the existing use category, the Building Commissioner must put them in the category that is most similar.

In the case of the Survival Center, the closest use has been determined to be “retail”, based upon the majority of activities undertaken by the organization. The “retail” use category is not the best fit for an organization such as the Survival Center.

To address this gap in the Bylaw, Article 24 would expand Section 3.330 into two sections:

Section 3.330.0 - Non-profit educational and religious uses (existing)

Section 3.330.1 - Non-profit human service use (proposed)

Neither of these categories would regulate non-profit human service uses involving residential activity, including overnight stays. Those residential uses are already regulated under an existing use category—Section 3.336.1, Philanthropic or charitable medical or residential facility.

The Zoning Board of Appeals reviewed this proposed amendment and recommended 5-0-2 that the proposed new use category be regulated under Special Permit in all Zoning Districts, believing that there could be some instances where it would be appropriate to consider the possibility of, but also deny, these uses in particular areas of town. The Planning Board’s Zoning Subcommittee and the full Board acknowledged that the new use category might apply to a range of non-profit uses—not just the Amherst Survival Center—and determined that they might be more suitably located in the downtown and core business districts.

Accordingly, the Zoning Subcommittee recommended, and the Planning Board concurred, that these uses should be regulated under a Special Permit in all residential zoning districts, in the B-N (Neighborhood Business) district and in the PRP (Professional Research Park) and FPC (Flood Prone Conservancy) districts. This would give the Zoning Board of Appeals the authority to say “no” in cases where the use might not be compatible with surrounding uses.

Public Hearing

Following review of the proposed article by Town Counsel, the Planning Board held a public hearing on Article 24 on March 3, 2010. The Planning Board discussed the types of “facilities” that may be associated with staging areas for off-site service delivery, such as “meals-on-wheels”. The language was revised to satisfy the concerns of the majority of the Board members. Ms. Barberet and Mr. Crowner expressed initial concern with the vagueness of this language and voted to abstain.

The current Board President of the Amherst Survival Center thanked the Board members for their efforts and stated that this amendment will help the Survival Center be more effective at meeting the needs of the community.

The Planning Board voted 6-0-2 (Barberet and Crowner abstaining) to recommend that Town Meeting adopt this article.

ATTACHMENT

ARTICLE 24 NON-PROFIT USES

To see if the Town will amend Section 3.330 of the Zoning Bylaw, by deleting the ~~lined-out~~ language, adding the language in ***bold italics***, and reorganizing it as follows:

3.330 *Non-profit Uses*

3.330.0 Non-profit educational institution, including any educational use on land owned or leased by the Commonwealth or any of its agencies, subdivisions, or bodies politic, or by a religious sect or denomination.

Standards & Conditions

See Sections ~~2.22~~ **2.04** and 3.21.

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3.330.1 *Non-profit human service use.*

Standards & Conditions

Uses under this section may include administrative offices and human service facilities providing services directly to members of the community on or from the premises, including facilities used as staging areas for off-site service delivery and facilities reasonably necessary for the safe, secure, and appropriate operation of the use.

A use under this section may offer a wide range of services on or from the premises, including but not limited to, counseling and therapy, training for employment and other life skills, distribution of food and clothing, provision of meals, and/or restrooms/shower facilities.

Other uses, such as retail sales, health services, personal care services, or similar uses, may be permitted, but shall be operated in a manner and during such limited hours as to render them clearly accessory and incidental to the principal non-profit human service use.

Non-profit human service uses involving overnight shelter or other residential activity shall be regulated under Section 3.336.1.

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