



PLANNING BOARD

Report to Town Meeting

**Article 14. Zoning – Business Uses of Homes
(Planning Board)**

To see if the Town will amend Article 5, Accessory Uses, and Article 12, Definitions, as follows:

~ SEE WARRANT ~

Recommendation

The Planning Board voted 7-0-0 with one member absent to recommend that Town Meeting adopt Article 14.

Background and Purpose

This article is a revised and improved version of an article originally proposed at the 2014 Annual Town Meeting to update the regulations for accessory home business uses (businesses operated by residents from their homes) to reflect changing standards and practices. The conducting of business from residences is encouraged by the Town so long as such businesses respect the character and peaceful enjoyment of the neighborhoods in which they operate.

Existing language describes accessory home business uses as (1) office or studio, and (2) home occupation. The former has few conditions – notably that a residence hosting a business is indistinguishable from a residence without a business – and is allowed by right with no oversight. The latter covers a range of trades- or craftspeople, requires a Special Permit, and has some additional conditions that address potential impacts from some of the home businesses that currently exist in town, such limitations on sales of merchandise and storage of materials.

However, through experience, the Building Commissioner and the Zoning Board of Appeals have uncovered a couple of weaknesses in the current regulations: First, that many minor accessory business uses receive the same set of conditions as more major business uses and have to go through the same Special Permit process; and second, that contracting businesses (like builders or landscapers) operating out of a home are more challenging to permit under the current bylaw because the existing language doesn't provide guidance for regulating the kinds of impacts they may have.

This amendment would establish performance standards for home businesses that, if met, would streamline the permitting process for many of them by allowing an administrative review in lieu

of a ZBA hearing and automatically apply the conditions that the ZBA has customarily attached to these kinds of businesses; and it would create categories and conditions for contracting businesses to make more clear the manner in which they can operate from a residence.

Mechanics

The amendment would redefine the two current categories of home business use and add two more having to do with contracting businesses, in ascending order of intensity:

1. A Home Business would describe someone working out of their home with no obvious clues that they are doing so, including no increase in traffic to the home. If conducted under the short list of conditions included in this section, then no permit would be needed.
2. A Customary Home Office is one that could involve clients coming to the residence, so there might be a larger parking lot to accommodate them, but otherwise the business doesn't have much impact on the neighborhood.
3. A Small Contractor is one that could have a vehicle or two used in the business parked at the house but no heavy equipment (defined as vehicles weighing more than 10,000 lb. and machinery used in the business), and any storage of materials is limited and enclosed.
4. A Large Contractor would be a more intense version of the other: more materials (not necessarily stored in an enclosed space) and more vehicles (but not more than two heavy vehicles) and it would be somewhat more obvious that a business exists on the premises. This kind of accessory use would be restricted to the lower density residential zones.

All would be subject to a list of general regulations (see Section 5.0121) that form a baseline of requirements for any business being operated out of a residence. These include that the business is operated by the residents of the home and is clearly accessory to the residence; and that with regard to parking, signs, and sounds associated with the business the character of the neighborhood should be protected.

While the first category of Home Business is allowed by right if these conditions are met, the others would require a Special Permit – except that the sections detailing Home Offices and Small Contractors include their own lists of specific conditions that, if met, would enable the Building Commissioner to approve the use administratively without the need for a ZBA hearing.

A Large Contractor would require a Special Permit in all cases and the use category would include a longer list of conditions that if *not* met would be an indication that the business is probably not appropriate as an accessory use to a home and should be based in a nonresidential building or in a different zoning district.

A waiver or modification provision would be included to allow the Building Commissioner or ZBA to modify the regulations to fit unforeseen circumstances.

Parts B, C, and D of the article would add definitions to help flesh out the new language being

added to the Bylaw, renumber subsequent subsections of Article 5, and correct cross references to other sections of the Bylaw that would be affected by the changes in Part A.

Benefits

The proposed amendment would update the accessory uses section of the Zoning Bylaw to better represent the kinds of businesses that people customarily operate from residences.

The proposed amendment would give the Building Commissioner and the ZBA a better set of guidelines to regulate some kinds of home business uses that don't really fit in our current Bylaw.

The proposed amendment would streamline the permitting process for home businesses that typically have minimal if any impact on their neighborhoods.

Risks

The proposed amendment might not adequately provide for the full range of home businesses that could or do occur in Amherst – though the amendment would be an improvement on the status quo, which is clearly inadequate.

Despite the proposed general and category-specific conditions having been derived from the recent history and practice of the ZBA, it may in some circumstances be preferable for a home business to go through the public hearing process and receive conditions that are site-specific.

Process

The Planning Board introduced a version of this article at the 2014 Annual Town Meeting at the request of Town staff. It was defeated amidst dissatisfaction about a provision that called for registration of home businesses even if allowed by right with no board or staff review. That element has been eliminated from this version, as has a section dealing with parking of vehicles at home businesses that was a little confusing and not necessary; any issues associated with parking can be dealt with as a condition of a Special Permit.

A public hearing on this article was held on September 21, 2016, at which time the Planning Board discussed the history, merits, and mechanics of the article. No additional input was received at that time, and the Planning Board voted 7-0-0 with one member absent to recommend the article as presented.

Addendum to Planning Board Report on Article 14, Business Uses of Homes

Here is the **existing language in the Zoning Bylaw, Article 5, Accessory Uses**, proposed to be deleted:

- 5.012 Office or Studio - The use of a portion of a dwelling or of a building accessory thereof as the office of a doctor, dentist, optician, member of the clergy, lawyer, architect, engineer or other member of a recognized profession, or as the studio or office of an artist, musician, teacher, real estate or insurance agent residing on the premises shall be considered accessory to the use of the dwelling unit, provided that:
- 5.0120 Not more than two persons other than residents of the premises are regularly employed therein in connection with such use.
 - 5.0121 No external change is made which alters the residential appearance of the building on the lot.
 - 5.0122 There is no outward evidence that the premises are being used for any purpose other than residential (except for an accessory sign or vehicle as hereinafter permitted).
- 5.013 Home Occupation - The Board of Appeals may authorize, by issue of a Special Permit, the use of a portion of a dwelling or building accessory thereto as the workroom of a resident artist, craftsman, beautician, dressmaker, milliner, photographer, cabinetmaker, skate sharpener, radio repair technician or other person engaged in a customary home occupation, or as the office of a resident taxicab or limousine service operator (see Section 3.340.3), or as a place for incidental work and storage in connection with the off-premises trade by a resident builder, carpenter, electrician, painter, plumber or other artisan, or by a resident tree surgeon, landscape gardener or similar person, provided that:
- 5.0130 Such use is clearly secondary to the use of a premises for dwelling purposes.
 - 5.0131 Not more than two persons other than residents of the premises are regularly employed there in connection with such use.
 - 5.0132 No trading in merchandise is regularly conducted except for products made on the premises or of parts of other items customarily maintained in connection with, and incidental to, such merchandise.
 - 5.0133 No external change is made which alters the residential appearance of the building on the lot.
 - 5.0134 All operations, including incidental storage, are carried on within the principal or accessory building, and that there is no outward evidence that the premises are being used for any purpose other than residential (except for an accessory sign or vehicle as hereinafter permitted).
 - 5.0135 The proposed accessory use would be suitably located in the neighborhood in which it is proposed and/or the total Town, whichever is deemed appropriate by the Board of Appeals.
 - 5.0136 In Residence Districts, the use will be reasonably compatible with other uses permitted as of right in the same district;
 - 5.0137 The use will not constitute a nuisance by reason of an unacceptable level of air or water pollution, excessive noise or visually flagrant structures and accessories, and the use is not a serious hazard to abutters, vehicles or pedestrians.
 - 5.0138 Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including special attention to safe vehicular circulation on the site and at the intersection with abutting streets.