



**PLANNING BOARD**

**Report to Town Meeting**

**ARTICLE 32. Zoning Bylaw. Filling of Land  
(Planning Board)**

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To see if the Town will amend Sections 3.12 and 5.10 of the Zoning Bylaw, by deleting the ~~lined-out~~ language and adding the language in *bold italics*, as follows:

~ SEE ATTACHMENT ~

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Recommendation

The Planning Board voted (5-0-1) to recommend that Town Meeting adopt Article 32.

Background

Article 32 is a technical change to two parts of the Zoning Bylaw regulating the filling of land— Sections 3.12 and 5.10. Section 3.12 addresses filling that occurs in association with certain kinds of development and sets baseline requirements for information to be submitted with permit applications when filling is going to occur. Article 32 amends Section 3.12 to recognize that filling can occur in association with by-right land uses requiring a Site Plan Review approval, and would update the level of detail required for topographic information to be submitted.

Section 5.10 addresses circumstances when filling is being proposed that will consist of more than 10,000 cubic feet within the two ‘brackets’ of surface area (2,000 sq. ft. and 5,000 sq. ft.). Article 32 amends Section 5.10 to broaden the range of Special Permit Granting Authorities who can permit filling of land over these thresholds.

Currently, the Special Permit required for filling above these thresholds is issued solely by the Zoning Board of Appeals. Article 32 would allow the Planning Board to grant the Special Permit for this filling when the Planning Board was also the permit-granting body for the principal use or proposed development of the property. Otherwise, the required Special Permit would still be granted by the Zoning Board of Appeals.

During the last 20 years, the Zoning Bylaw has been amended numerous times to allow the permitting body issuing the permit for a principal, by-right use to grant any Special Permit needed for an accessory use or dimensional modification associated with the principal use and exceeding the ‘default’

regulations in the Bylaw. This avoids the potential for disputes between different permitting bodies that could catch applicants in the middle and result in a situation where applicants have to go back and forth between permitting bodies trying to resolve a dispute not of their own making.

If the permit-granting body which issues the permit for the principal use or development method is the same one issuing the Special Permit for any expansion or a modification of ‘default’ dimensions, then the board that best understands the overall use or development is responsible for its modification.

Similar past amendments (revisions to existing language or new provisions) include:

- The numerous dimensional modifications possible under footnote a. of Table 3.
- Converting the ZBA Special Permit originally required in Amherst for cluster subdivisions to, first, a Planning Board Special Permit (SPP) and then a Site Plan Review approval (Section 4.0, Table 2), in large part because under state law, the Planning Board approves subdivision layouts.
- Establishing a Special Permit requirement for drive-through facilities accessory to by-right uses in specific zoning districts (Section 5.0430). Special Permits for drive-through facilities accessory to by-right uses are granted by the Planning Board. Special Permits for drive-through facilities accessory to Special Permit uses are granted by the ZBA.
- The Special Permit required to allow any outdoor experimentation accessory to scientific research or development uses (Section 5.0713). Same distribution—when the principal use is by right, the Planning Board grants the Special Permit for accessory outdoor experimentation. When the principal use is by Special Permit, the ZBA grants the Special Permit for accessory outdoor experimentation.
- The Special Permit required for on-premises sale of “custom-made goods produced by hand manufacturing” accessory to by-right light manufacturing uses (3.372.1). The same pattern applies.

In some cases, amendments to the Bylaw have even made explicit that when the Planning Board is the only possible original permit granting body, it will grant any Special Permit for a development method, accessory use, or dimensional modification. Cluster subdivisions are one example. Another example is where, as the body endorsing ANR lots, the Planning Board is the body responsible for granting a Special Permit for any driveway that is longer and/or steeper than otherwise allowed (Section 7.722).

### **Public Hearing**

The Planning Board held a public hearing on Article 32 on April 6 and 27. The Zoning Subcommittee reported its recommendation and noted that one citizen had expressed concern that these amendments might either make filling easier to do or affect the status of any illegal filling that might be occurring. It was noted that Article 32 would not make filling easier—a Special Permit would still be required when the thresholds were exceeded. Neither would Article 32 change what constitutes illegal filling—any filling that is illegal under the current regulations would still be illegal if Article 32 was adopted.

There was no other public comment.

After discussion, the Planning Board voted (5-0-1) to recommend that Town Meeting adopt Article 32.

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**ATTACHMENT**

**ARTICLE 32 RESIDENTIAL PARKING REQUIREMENTS  
(Zoning Bylaw – Planning Board)**

To see if the Town will amend Sections 7.00 and 7.1 of the Zoning Bylaw, as follows:

**A. Amend Section 3.12, as follows:**

**3.12 Earth Removal and Filling of Land**

3.121 Any application to the Zoning Board of Appeals for a Special Permit, or to the Planning Board for *Site Plan Review or* Definitive Subdivision Plan Approval, as specified in Sections 3.1225, 3.1226, 3.374 and 5.10, shall include the following specific information:

3.1211 The location of the proposed excavation or filling;

3.1212 The legal name and address of the owner of the property;

3.1213 The legal name and address of the petitioner;

3.1214 Names and addresses of all abutting property owners including those on the opposite side of any streets;

3.1215 A plan of land involved prepared by a Registered Land Surveyor, showing all manmade features, property lines, vegetative cover, watercourse, drainage swales, soil characteristics and existing topography by ~~five~~ *two* foot contours plus a strip 100' wide surrounding said land;

3.1216 A plan of land showing ~~five~~ *two* foot contours of the finish grading and drainage of the site with clear identification of the top and toe slopes after the proposed completion of the excavation or filling project;

3.1217 The estimated quantity of material to be removed or added and topsoil to be stripped and replaced.

3.1218 The proposed form of bond to be used.

**B. Amend Section 5.10, as follows****SECTION 5.10 FILLING OF LAND (See Sections 3.121 & 3.122)**

Any filling of land accessory to the development of property, which raises the existing grade of any portion of a property 5,000 square feet or more in area by an average of two (2) feet or more, or any such filling which raises the existing grade of any portion of a property 2,000 square feet or more in an area by an average of five (5) feet or more shall require a Special Permit *from the Special Permit Granting Authority authorized to act under the applicable section of the bylaw. Where no other permit is required under this bylaw for the proposed or existing principal use(s) of the property, such filling shall require a Special Permit from the Zoning Board of Appeals. In all cases, such filling shall be* subject to the following conditions:

- 5.100 No slope created by the filling operation shall be finished at a grade in excess of the natural angle of repose of the materials.
- 5.101 All filled areas which are not to be built upon within one (1) year shall, upon completion of the operation, be covered with not less than four (4) inches of loam, brought to the finish grade, seeded and mulched in a satisfactory manner.
- 5.102 No permit for the filling of land shall be issued if such filling will: 1) endanger public health or safety; 2) constitute a nuisance; 3) result in a detriment to the normal use of the adjacent property; 4) cause significant erosion or sedimentation due to improper drainage design or management; or 5) result in traffic hazards in residential areas or excessive congestion, or physical damage on public ways.
- 5.103 In granting a permit for such an accessory use, the ~~Zoning Board of Appeals~~ *Special Permit Granting Authority* may impose reasonable requirements on grading, seeding and planting, barriers needed for public safety, control of erosion and drainage and other appropriate aspects of the use.
- 5.104 The ~~Zoning Board of Appeals~~ *Special Permit Granting Authority* may require a suitable performance bond or other security adequate to ensure satisfactory compliance with provisions of this section.