



PLANNING BOARD

Report to Town Meeting

**Article 25. Zoning Petition - Mixed-Use Buildings
(Wentworth et al)**

To see if the Town will vote to amend the Zoning Bylaw, Section 3.325 “Building containing dwelling units in combination with stores or other permitted business or commercial use” by changing the nature of the permits required in some zoning districts, amending the first paragraph under Standards and Conditions (deletions in s trike-thru, additions in bold face) to create three separate numbered paragraphs, and to designate the existing second paragraph by the number “4”:

~ SEE WARRANT ~

Recommendation

The Planning Board voted 6-1 (Crownor opposing, preferring referral), to recommend that Town Meeting dismiss Article 25.

As proposed, Article 25 is incomplete, technically flawed, and would introduce confusion into the Zoning Bylaw. While there may be issues associated with mixed-use buildings that merit consideration for zoning amendments, Article 25 does not usefully identify or resolve them, and its purpose is to roll back decades of Town Meeting amendments to the Zoning Bylaw aimed at increasing the viability of downtown development.

Background

Article 25 is a petition article sponsored by the citizens’ group Amherst Community Planners. According to the petitioners themselves, it seeks to roll back—to undo—years of Town Meeting zoning amendments aimed at making mixed-use buildings and downtown Amherst more viable. The article contains several technical flaws, some of which could impair the function of the Zoning Bylaw. It is not clear what aspects of the petition the Town Moderator will allow to go forward.

What Article 25 Seeks To Do

Article 25 seeks to make several changes in the way that mixed-use buildings are regulated in the downtown:

Article 25 Proposes to Alter Permit Requirements – The current Zoning Bylaw regulations require a by-right Planning Board Site Plan Review approval (SPR) permit for mixed-use buildings in all of Amherst’s center mixed-use districts—the B-G, B-L, B-VC, B-N, and COM districts. Article 26 proposes to add (in certain districts only) a requirement for a Special Permit for mixed-use buildings of more than three floors. In so doing, the petition seeks to reverse more than 20 years’ worth of community intention and would have the effect of making it more difficult for private developers to build suitably dense mixed-use buildings in the very location—downtown Amherst—that Town Meeting and the community have said that such uses should be actively encouraged.

Article 25 Seeks to Impose Different Rules on Mixed-Use Buildings Downtown - In the B-G and abutting B-L districts only, Article 26 seeks to adjust the proposed ‘default’ permit regulation of mixed-use buildings as follows:

- Mixed-use buildings of up to three (3) floors would be permitted under a by-right Planning Board Site Plan Review approval, with:
 - No less than 40% of total building Gross Floor Area (GFA) consisting of retail and commercial uses, and
 - No residential units permitted on the ground floor or in a basement.

- Mixed-use buildings of four (4) or more floors would be permitted by ZBA Special Permit only, with:
 - No less than 40% of total building Gross Floor Area (GFA) consisting of retail and commercial uses, and
 - Both the ground floor and second floor of such buildings to be devoted entirely to retail and commercial uses (except for ancillary uses).

Article 25 Adds Highly Specific Management Plan Requirements to the Zoning Bylaw – All applicants for Site Plan Review approvals and Special Permits are already required to submit management plans with their applications that describe in detail how the property and use(s) will be operated and managed. The detailed requirements for these management plans are in the Rules & Regulations of the Planning Board and Zoning Board of Appeals, as authorized under state law.

Article 25 seeks to add to the Zoning Bylaw some specific and isolated requirements to the management plans already required for mixed-use buildings, including:

Parking Requirements – The petition proposes a redundant requirement for cumulative calculations of parking required for each distinct land use located in a mixed-use building. Such calculation of parking requirements is already required under Section 7.00 of the Zoning Bylaw:

In all districts except Educational Districts, off-street parking spaces shall be provided and maintained in connection with the construction, conversion or increase in dwelling units or dimensions of buildings, structures or use. . . . Except as may be required otherwise by the Permit Granting Board or Special Permit Granting Authority, as applicable, parking spaces shall be provided in at least the following minimum amounts. . . . [Followed by the requirements for each use—residential, lodging, public assembly, religious or education uses, retail/office/similar uses, and all other permitted uses.]

Deliveries & Parking – Article 25 would require a redundant plan for meeting the needs for deliveries, and parking. The Rules & Regulations of the Planning Board and ZBA already require the submission of plans showing “provisions and schedules for deliveries, loading, and unloading of any products, goods/services, including take-out /delivery services, if applicable.”

Residential Turnover – Article 25 would require submission of plans showing how an applicant will handle parking and other aspects of the seasonal residential turnover typical of college towns. Such a plan requirement is not specifically included in the existing Rules and Regulations of the permit-granting boards, but is more appropriately located there than in the Zoning Bylaw and could easily be added by the respective boards.

Adding these specific and isolated requirements for management plans—and none of the numerous other plan requirements—to the Zoning Bylaw would contribute to confusion for applicants and others. It would also add a burden of cumbersome process by requiring that any future adjustment of these regulations obtain a 2/3s vote of Town Meeting.

Technical Errors & Omissions

Article 25 includes a number of substantial errors or omissions that challenge its ability to function, and threaten, if adopted, to impair the function of the Zoning Bylaw with regard to mixed-use buildings:

The Definition of the Use Category is Missing – The use category this petition proposes to amend is entitled “Mixed-use building”, not “Building containing dwelling units in combination with stores or other permitted business or commercial use.” That change, including the addition of the definition of the use which appears in the first paragraph of the Standards and Conditions, was made by Town Meeting in Fall 2013. The correct title and the definition do not appear in the petition article.

The current definition reads as follows:

A mixed-use building shall be a building containing dwelling unit(s) in combination with permitted retail, business, institutional, government, public service, consumer service, office or similar principal use(s) and lawful accessory use(s).

This definition is central to the function of the use category, which the Zoning Bylaw considers a residential use. It tells applicants and the public what constitutes a mixed-use building. It was not deliberately removed by the petitioners—the preamble to Article 25 declares that changes will be accomplished by “deletions in ~~strike-thru~~, additions in **bold face**.” No such graphic change is included for the title or the definition. They simply do not appear in the proposed amendment. It is possible that the Town Moderator would consider this to be a scribner’s error and allow their reintroduction into the text of the petition. The petitioners should follow up with the Moderator.

Article 25 Does Not Provide a Way to Apply the New Special Permit Requirement for 3½ of the 5 Zoning Districts Where that Permit is Proposed – As noted above, Article 25 proposes to add a Special Permit option for mixed-use buildings in five ‘center’ zoning districts. But the proposed amendments to the Standards and Conditions only provide a mechanism for using Special Permits in the B-G District and its abutting B-L Districts. The amendment proposes no mechanism for applying the Special Permits proposed for the B-VC, B-N, and COM Districts, or the B-L District not abutting the downtown B-G District (i.e., the B-L District along University Drive. Without such a mechanism, the addition of the Special Permit ‘option’ simply creates confusion—which permit requirement applies, and under what circumstances?

It is likely that adding new provisions for the missing districts would at this point be beyond the scope of the article, though the petitioners should explore this with the Town Moderator. The petitioners have the option of moving an amended motion without the Special Permit proposal for those districts. As it stands, the amendment does not function for most of the zoning districts where a permit requirement change is proposed.

Adding a New Permit Option Needs to be Done Correctly - One petitioner has noted in public session that, under certain circumstances (when upper floor residential units exceed ten (10) units), a Special Permit is required for mixed-use buildings in the COM Districts and the B-L District not abutting the downtown (i.e., the B-L District along University Drive). They argued that the Special Permit option being added for those districts under Article 25 therefore has meaning. But that existing requirement is based on a very different threshold than Article 25 proposes for the B-G and abutting B-L districts, where the threshold is the number of floors.

Further, there is no typographic indication for when the Special Permit option applies, or text describing how it applies and to what. In other parts of the Use Chart of the Zoning Bylaw, where more than one permit option exists, an asterisk (*) is added to the additional permit requirement which then refers to specific written criteria in the Standards and Conditions (also asterisked) that describe how the additional permit requirement is triggered and applied. There is no such visual clue nor any written criteria proposed as part of Article 25.

History of Mixed-Use Building and Downtown Development Amendments

Because the petitioners have explicitly stated that their intent is to roll back changes Town Meeting has made with respect to downtown Amherst, it is worth reviewing some of those changes.

In terms of the proposed 'trigger' of building height, it was the 1992 Annual Town Meeting that made four story buildings allowable by right in downtown Amherst, and the 2013 Annual Town Meeting that increased the maximum to five stories (see below).

Here are some of the related changes Town Meeting has approved since the Amherst Master Plan process began in 2006:

2006 Annual Town Meeting

- Reduced the requirement for minimum lot area and additional lot area/family for residential uses in the B-G and B-VC districts. A declared 2/3s vote.

2007 Fall Special Town Meeting

- Extended the B-G District south to include both sides of Spring Street east of Churchill Street. Changed the permit requirement for an Inn in the B-G District from Special Permit to Site Plan Review approval. Both passed by a declared 2/3s vote.

2008 Fall Special Town Meeting

- Removed the minimum lot area and additional lot area/family requirements for multi-family uses in the B-G and B-VC Districts. A declared 2/3s vote.

2009 Annual Town Meeting

- Expanded the Municipal Parking (MP) District northward to include all of the B-G and abutting B-L districts in the north end of the downtown and associated areas.

Passed by a 75% super-majority vote (137Y, 47N).

- Removed the requirement for minimum lot frontage for residential uses in the B-G and B-VC Districts. A declared 2/3s vote.

2013 Annual Town Meeting

- Dwelling unit counts increased and ground floor residential units allowed for mixed-use buildings in the B-L and COM District. A motion to refer was defeated, and the amendment was adopted by a 68% margin (119Y, 56N).

- Minimum and maximum height modified (including going from 4 to 5 floors in the B-G District) and other dimensions were altered to increase density in the B-G and B-VC districts. Passed by a 71% super-majority vote (121Y, 53N).

2013 Fall Special Town Meeting

- Changing the title and adding a definition for a mixed-se building. A declared 2/3s vote.

This body of work by Town Meeting and the community consensus it represents with regard to downtown development is what the petitioners for Article 25 propose to undo.

Public Hearing

The Planning Board held a public hearing on Article 25 on Wednesday, March 4, 2015. No representative for the petitioners was present during the public hearing, so the Chair summarized the contents of the article for the members of the public present.

The Zoning Subcommittee presented its analysis of Article 25, observing that there was a lot going on with the article, including some aspects that might be worth a deeper analysis than there was time to attempt. However, the petition contradicts recent zoning amendments and some elements necessary for its ability to function were missing, and these did not appear to be capable of being adjusted prior to Town Meeting. The Subcommittee had voted 4-1 to recommend referral of the article, with Mr. Carson preferring that the article be defeated.

Ms. Calabrese stated that there was not much to work with in Article 25 beyond a new examination of the use category, while Mr. Stutsman said he believed the aspect of the article that sought to promote more commercial space was worth examining.

During public comment, the Director of the Amherst BID stated that Article 25 was very problematic and extreme, and could be dangerous to the downtown. There is an existing definition of the mixed-use buildings that could be tweaked, and other issues to consider, but this was not the best approach. She urged dismissal of the article.

Mr. Webber said the article would have the effect of eliminating buildings of four or more stories and that the article's technical difficulties described by staff were just part of the problem. He opposed every aspect of Article 25, and would recommend that the Planning Board recommend defeat of the article, since the petitioner had previously stated that it was an attempt to undo changes Town Meeting had recently made. Mr. Crowner replied that it was a matter of style. The defects in Article 25 were same whether the article was referred or defeated. He preferred that the Board engage with the petitioners.

After further discussion, the Planning Board voted 6-1 to recommend that Town Meeting dismiss Article 25.