

**FALL 2015 Special Town Meeting  
Planning Board Report to Town Meeting Regarding  
Proposed Planning Board Article 16  
CONVERSION OF SINGLE-FAMILY TO TWO-FAMILY DWELLING**

**PB Article 16:** To see if Town Meeting will vote to amend in the Zoning By-Law **Section 5 USE REGULATIONS**, Subpart (E) **Use Regulations Schedule**, by changing the use “*Conversion of Single-Family to Two-Family dwellings, as provided in Section 7*” from prohibited in Residence A-1 zoning district to Permitted by Special Permit in Residence A-1 zoning district subject to specified limitations and restrictions and **Section 7 SUPPLEMENTAL DISTRICT REGULATIONS**, Subpart (F) **Conversion of Single-Family to Two-Family Dwelling** by deleting the existing Subpart (F) in its entirety and inserting in its place a new Subpart (F) **Conversion of Single-Family to Two-Family Dwelling**, as detailed in Planning Report to Town Meeting (also available in Town Clerk’s Office or at Planning Department) or take any other action relative thereto.

The proposed changes are as follows:

1. In **Section 5, USE REGULATIONS**, Subpart (E) **Use Regulations Schedule**, in regard to the “Residential Uses” classification,
  - a. In regards to the Residence A-1 zoning district, change the restriction from “prohibited” as denoted by “N” to “permitted by Special Permit” as denoted by “SP”
2. In **Section 7 SUPPLEMENTAL DISTRICT REGULATIONS**, Subpart (F) **Conversion of Single-Family to Two-Family Dwelling**, delete the existing Subpart in its entirety and replace said provisions with a new Subpart (F) **Conversion of Single-Family to Two-Family Dwelling** to read as follows:

**(F) Conversion of Single-Family to Two-Family Dwelling**

In conformance with the provisions of Section 9, and subject to the additional requirements described herein, the special permit granting authority may approve a special permit allowing for a single-family dwelling or other suitable structure to be altered and improved and facilities added for a second housekeeping unit on a lot, in such Districts where permitted under **Section 5, USE REGULATIONS**, Subpart (E) **Use Regulations Schedule**.

**1. Route 116**

Any property abutting Route 116 in a Residence A-2, Residence A-1, or Agricultural District may qualify for such a Special Permit and be so converted, provided the

property and building conform to the following criteria in addition to meeting the Special Permit standards set forth in Section 9 of this Bylaw:

- a. The parcel may not have access onto any road other than Route 116.
- b. The footprint of the building may not be expanded except for possible installation of safety required items.
- c. The footprint of the building may not be expanded by more than 5%; however, any such expansion is not to be visible from Route 116 and is to be generally screened from view from adjoining properties used as single-family residences.
- d. The exterior facade shall not be altered other than to restore its original exterior appearance; however, measures to upgrade the building to more sustainable conditions (by such means as installation of energy efficient building materials including but not limited to windows, installation of gutters and downspouts, and similar such measures) will generally not be considered as impermissibly altering the exterior appearance.
- e. The dwellings must be served by the Town's sanitary sewer system
- f. No increase in impervious surface except where necessary under "b" above subject to the limitation of "c" above.

**2. *Best Interests and Harmony Requirement***

The power to approve such a Special Permit for conversion to a two-family dwelling shall be within the sole discretion of the special permit granting authority, and no such permit shall be approved unless it shall be clear that the use requested is for the best interests of the vicinity and in harmony with the general purposes and intent of the By-Law. Each case shall be considered on its own merits and no case shall raise a presumption in favor of any other case.

**EXISTING PROVISIONS**

**Section 5, USE REGULATIONS**

**Subpart (E) Use Regulations Schedule**

Conversion of Single-Family Dwelling to Two-Family Dwelling is:

- Prohibited in several zoning districts including the **Residence A-1** zoning district.
- Permitted by Special Permit Only in the Residence A-2 and Agricultural zoning districts
- Permitted by Right in the Residence B, Business A, and Business B zoning districts

Two-Family Dwellings (new) are:

- Prohibited in the Agricultural, Business A-1, Business C, Industrial A, Industrial B, and Industrial Garden District zoning districts

- Permitted by Special Permit Only in several zoning districts including the **Residence A-1** zoning district.
- Permitted by Right in the Residence B zoning district

**Section 7, SUPPLEMENTAL DISTRICT REGULATIONS**

**Subpart (F) Conversion of Single-Family to Two-Family Dwelling**

In conformance with the provisions of Section 9, and subject to the additional requirements described herein, the special permit granting authority may approve a special permit allowing for a single-family dwelling or other suitable structure to be altered and improved and facilities added for a second housekeeping unit on a lot, in such Districts where permitted under the Use Regulations Schedule, Section 5, Part (E).

In all such cases, the petitioner, as part of the Application for such permit, shall present adequate plans setting forth the changes and improvements to be made, and shall have secured the written consent and approval of at least (3) of the following owners:

The owner of the lot on either side of the petitioner’s property; the owner of the lot adjacent in the rear of the petitioner’s property; and the owner of the lot directly across the street therefrom. Where the petitioner is the owner of a lot on either side, in the rear or across from the property for which such a special permit is requested, and approval shall be secured from the owner of the property adjacent in the rear of the petitioner’s property, the owner of the lot which abuts the greater length on the petitioner’s property shall be deemed “owner of the lot adjacent in the rear of the petitioner’s property” as used in the second clause of the first sentence of this paragraph.

In the case of an application for a special permit involving a dwelling situated on a corner lot or so located that the above enumerated is unreasonable or impossible, the special permit granting authority may approve such permit, provided that the consents of the property owners are obtained substantially in accordance with the principles herein set forth, as may be determined by said authority. The power to approve such permit for conversion to a two-family dwelling shall be within the sole discretion of the special permit granting authority, and no such permit shall be approved unless it shall be clear that the use requested is for the best interests of the vicinity and in harmony with the general purposes and intent of the By-Law. Each case shall be considered on its own merits and no case shall raise a presumption in favor of any other case.

**OBJECTIVE:** The objectives of article are

- 1) to remedy a legal issue with the existing written consent provision of Section 7 (F) and

- 2) to promote a more sustainable approach to two-family development consistent with the Master Plan recommendations while maintaining the integrity of the mixed use corridor of Route 116.

**SUMMARY:** This article fulfills the objectives stated above by deleting the unenforceable requirement that persons seeking a Special Permit for “conversion of a single-family dwelling to a two-family dwelling” obtain written consent from 3 out of 4 immediate abutters and to change the prohibition on such conversions in the Residence A-1 zoning district to a permission subject to a Special Permit and specific requirements which include limiting the change to properties having direct access to Route 116 and having municipal sewer.

**BACKGROUND:** The amendment proposed in this warrant article has been the result of over 3 years of study and effort by the Planning Board. It was initiated several years ago as the result of a review of the Zoning Bylaw and the inconsistent manner in which a Conversion of a Single Family Dwelling to a Two-Family Dwelling and the permitting of a new Two-Family Dwelling are treated in the Zoning Bylaw. It also derived from issues of sustainability, compatibility, and the need for diverse and in-fill housing raised during the Master Plan process.

***Rationale for Amendment***

South Hadley Master Plan. As noted below (see section “*Relationship to Master Plan*”), the Master Plan encourages adopting incentives to convert existing residential structures to more dense residential use. Elimination of the Zoning Bylaw barriers to conversion in a manner which protects the integrity of the area provides the basic incentive necessary. Removal of the “written consent” requirement, consistent with the Master Plan, modernizes the Zoning Bylaw in regard to this issue.

Sustainability. Consistent with the principles and recommendations in the Master Plan, this amendment promotes sustainable development practices beneficial to the property owner, community, and the Town. Taking existing developed properties and converting to a more intense use without reducing the greenspace significantly is the essence of sustainable, smart growth.

***Restrictions***

Conversions in the Residence A-1 zoning district would be subject to the requirements of a Special Permit under Section 9 of the Zoning Bylaw. However, the amendment also proposes several additional standards for conversions in Residence A-1 as detailed previously:

- a. The parcel may not have access onto any road other than Route 116.
- b. The footprint of the building may not be expanded except for possible installation of safety required items.

- c. The footprint of the building may not be expanded by more than 5%; however, any such expansion is not to be visible from Route 116 and is to be generally screened from view from adjoining properties used as single-family residences.
- d. The exterior facade shall not be altered other than to restore its original exterior appearance; however, measures to upgrade the building to more sustainable conditions (by such means as installation of energy efficient building materials including but not limited to windows, installation of gutters and downspouts, and similar such measures) will generally not be considered as impermissibly altering the exterior appearance.
- e. The dwellings must be served by the Town's sanitary sewer system.
- f. No increase in impervious surface except where necessary under "b" above subject to the limitation of "c" above.

**Legal Issue.** The current provisions of Section 7(F) require applicants for a Special Permit to convert a single-family dwelling to a two-family dwelling to secure the written consent for such proposed conversion from 3 out of 4 adjoining property owners. This written consent requirement precludes the application of the Zoning Bylaw in a consistent manner in regards to the Special Permit or other standards of the Town. As a result of discussions at public meetings and prior public hearings, the Town Planner recently discussed the issue with the Town Counsel. On October 19, 2015, Town Counsel Ed Ryan provided the following email message to the Town Planner

*Richard: Last week I had the opportunity to speak with Margaret Hurley the Asst Attorney General who heads up the Municipal Division of that office regarding the current version of our by-law referred to above. After some discussion she expressed the same concerns that I had regarding that portion of the by-law that required written approval from three of an applicant's 4 abutters to even get to the table. Her concerns, like ours, were with the placing of regulatory powers in abutters and that it violates the "uniformity provisions" of the law and particularly our by law as no other Special Permit has any such requirement. She felt strongly that it would not pass the approval process of her office on constitutionality if it were submitted today and was in agreement that we should consider measures to change it.*

The only way to remedy this problem and bring the Zoning Bylaw, in this aspect, into conformity with the legal requirements is to remove from the Zoning Bylaw the requirement for written consent from abutters. Removal of this requirement does not and will not result in abutters being excluded from the process. Nothing in the proposed amendment changes the need for such conversion of properties to obtain approval of a Special Permit from the Planning Board and comply with the mandatory 12 Special Permit standards.

Therefore, the proposed amendment includes replacement of a new Section 7(F) which does not provide for any “abutter veto” of an application.

***Residence A-1 Restriction.*** The current Zoning Bylaw allows, by Special Permit, construction of a new two-family or conversion of a one-family to a three-family (defined as a multi-family dwelling) but does not allow for conversion of a one-family to a two-family dwelling in the Residence A-1 zoning district. The Planning Board previously sought to have this inconsistency changed with a broadly applicable Zoning Bylaw amendment; however, in 2013 Town Meeting voted to reject the amendment and a number of Town Meeting members suggested that the Board revisit the issue – possibly scaled back. Therefore, the Planning Board has reviewed this matter again over the past 2 years having considered submitting a revised amendment in 2014 but electing not to do so as it was not sufficiently ready for thorough consideration.

#### Geographical Scope – Why Route 116?

This current proposal is scaled back from any previous proposal submitted by the Board for Town Meeting consideration. The Board determined that it makes sense to consider existing mixed use corridor locations as opposed to established single-family neighborhoods. After having revised the uses allowed on Routes 33, 202, and 116, the Board determined that the nature of the Route 116 corridor where sewer already exists is such that that it is not an exclusively single-family environment but a mixed use environment. This conclusion is borne out by the data compiled from the Assessor’s records for the properties zoned Residence A-1 along Route 116.

According to the DPW, sewer extends on Route 116 approximately 800 feet beyond the intersection of Amherst Road and Woodbridge Street. Thus, the Board directed the Town Planner to review the parcels in this corridor. Below are the statistical results of this review:

- Total Parcels zoned Residence A-1: 94
- Total Dwelling Units: 157
- Total Single-Family Dwellings: 44
- Total Two-Family Dwellings: 14 (7 buildings)
- Total Three-Family Dwellings: 18 (6 buildings)
- Total Four-Family Dwellings: 16 (4 buildings including the Clearview Condos)
- Total Multi-Family (5 or more dwellings): 65 (two developments – The Mill @ Stonybrook and Newton Manor)
- Parcels with no “buildings”: 12
- Five Buildings owned by Mount Holyoke College have no “dwellings” but 3 or more bedrooms

- Several nonresidential developments including several office buildings, schools, a church, and a funeral home

### Implications

Approximately 4.1 miles of frontage along Route 116 is zoned Residence A-1. This amounts to approximately 40% of the entire frontage along Route 116 traversing the Town.

Only 44 properties in the Residence A-1 zoning district would be potentially eligible to apply for a Special Permit under this amendment. According to the Assessor's Office, that is equivalent to approximately 1% of the total single-family housing supply in South Hadley. Those 44 properties account for slightly over one-quarter of the Residence A-1 zoned frontage and one-quarter of the acreage of the Residence A-1 zoned properties abutting Route 116.

***Relationship to Master Plan.*** There is not a clear Recommended Action that speaks to this Article. Rather, the theme of sustainability, need for diverse housing, and encouraging retention of existing structures versus construction of new multifamily buildings characterizes some of the recommendations and underlies the objectives of this Article. The most directly related Master Plan Recommended Action is 2-5-8 under Land use and Community Design Goal #2:

*Recommended Action 2-5-8:* Adopt incentives to encourage retention of existing residential buildings through conversion to multi-family use in lieu of demolition of such structures for development of new multi-family buildings.

By treating Conversion of Single-Family Dwellings to Two-Family Dwellings the same as new Two-Family Dwellings subject to the restrictions detailed, this Article will remove a current incentive to tear down existing single-family structures in order to have a two-family structure. At the same time, this approach provides more diversity of housing and in-fill of housing without consuming more land which relate to some of the issues and recommendations identified in the Housing element of the Master Plan (Housing Objective 2-1, Housing Goal H-5, for examples):

*Housing Objective: 2-1:* Housing developments with diversity of prices and types.

*Housing Goal H-5:* Sustainable housing development.

More basic to the Master Plan are the Four Plan Principles and the Five Core Initiatives. Specifically, the first and third Plan Principles relate directly to this amendment:

***Managing towards our Shared Vision:***

*Coordinating Town actions, regulations, and investments consistently towards achieving the community's objectives and goals. This principle envisions efforts*

*to manage town programs, budgets, and actions in a proactive way that is intentionally and thoughtfully directed towards achieving specific outcomes, and applies both to overall planning and policy and to specific actions of town departments. For example, a goal of developing a number of parcels of open space over time might suggest the coordination of complementary economic incentives, zoning bylaws, and infrastructural improvements.*

***Sustainability:***

*Promoting policies and actions that will meet the needs of the present without compromising the ability of future generations to meet their own needs.*

*Sustainability should be understood broadly to include maintaining a long-range focus for Town actions and investments as well as the stewardship of the Town's natural lands, parks, and public buildings. Sustainability also implies renewed attention to efficiency, or making the most of what we have, whether measured in infrastructure, energy, money, or time, or in natural resources like land and water.*

By modernizing, in a small way, the Zoning Bylaw in regards to conversion of single-family dwellings, this amendment promotes infill development, discourages the need to develop raw land for some housing, and encourages a sustainable development environment consistent with the character of the community. Route 116 already has seen significant roadway and other infrastructure investments and can the additional housing which this amendment would allow – in a managed fashion.

The fifth Core Initiative speaks to updating the Regulatory Infrastructure:

***Core Initiative 5: Updating the Regulatory Infrastructure to Support the Community's Desired Outcomes***

*Goal: Develop and adopt a modern, efficient and effective regulatory infrastructure that creates a framework for enhancing South Hadley's community, economy, and aesthetic quality.*

*To accomplish the Town's many goals, the Town's zoning bylaw, subdivision regulations, zoning map, and review procedures need to be reviewed and revamped to help enable desirable development, improve the business environment, allow for housing diversity, and improve the aesthetic quality of South Hadley. Updated community standards that flow from the principles, goals and recommendations of this Plan will*



- *help improve housing quality and options;*
- *provide consistency and transparency to the development review process;*
- *promote infill and development that meets emerging economic models;*
- *enact design and landscaping standards that ensure that new investments improve the quality and function of South Hadley's landscapes; and*
- *provide historic resource standards that ensure the future of South Hadley's iconic buildings and neighborhoods.*

*Strategies include:*

- *Update the Zoning Bylaw*
- *Update Subdivision Regulations*
- *Undertake an assessment of the design character and enacting a Design Review Bylaw*
- *Expand the boards and committees involved in the development review process*
- *Formalize the role of the Development Review Team in carrying out coordinated and expanded development reviews.*
- *Discourage new commercial development in the residential areas through zoning*

This amendment seeks to update the Regulatory Infrastructure in several respects:

- a. Eliminate an outdated and no longer legally permissible delegation of municipal regulatory authority to private property owners
- b. Put conversion of single-family dwellings to two-family dwellings on par with more disruptive development options – new two-family or conversion to more dense uses where more dense uses may not be appropriate.

**PUBLIC HEARING:** The Planning Board held a public hearing on this amendment on October 19, 2015 (however, due to a defective notice, **a new public hearing was held on November 9, 2015**). Three persons attended the October 19<sup>th</sup> public hearing. Questions and comments were made regarding 1) how would abutters have input into screening of expansion of buildings, 2) why is the Board not proposing to allow the conversion throughout the Residence A-1 district, 3) problem with Boarding Homes, and 4) the costly nature of renovation of existing buildings.

The Town Planner and Planning Board members stated:

- 1) Conversion will still require a Special Permit and public hearings. Abutters will always be notified of the hearing and the Board will listen to concerns regarding screening and

work with the abutters and the applicant to ensure proper and appropriate screening is provided.

- 2) Town Meeting previously, overwhelmingly, voted not to allow conversion throughout the Residence A-1 district. The Board members have listened to Town Meeting members at the meeting, in hearings, and through conversations. This amendment proposal reflects that listening. If Town Meeting approves this amendment, the Board is open to evaluating the appropriateness of other corridors or areas suitable for such conversion options.
- 3) Boarding homes are not allowed in Residence A-1 under the Zoning Bylaw and this amendment will not change that status. People do violate the Zoning Bylaw – and other laws. Those persons should be reported to the Building Commissioner so she can take enforcement action.
- 4) The Board recognizes that renovation of an existing structure is almost always more expensive than tearing down and old structure and building new. However, conversion can be much more compatible with the character of an area and lessen the impacts on the area. The Board would like to give property owners and an option to the tear down and build new route through this amendment.

**November 9, 2015 Public Hearing:** Approximately 10 persons attended the November 9th public hearing. Questions and comments were made at this hearing which were similar to those made October 19th. However, additional comments made including:

- A note that the Zoning Bylaw has not changed, therefore, this amendment would also change the requirement for Residence A-2 in that it would remove the required written consent of 3 out 4 abutters.
- Suggestion/question that the Board had stated that it wanted to change the rest of Residence A-1 to allow conversion of single family dwelling to two family dwelling.
- Question about the safety access requirement.
- Question as to whether overwhelming neighbor opposition would be enough to defeat a proposal to convert a single family dwelling to a two family dwelling.
- Why is this amendment being proposed?
- Would conversion of a single family dwelling to a two family dwelling impact affordability of housing?
- In researching other communities, a commenter stated that she could not find any case where an abutter's objection was sustained.
- The Residence A-1 district is traditional New England.
- Screening of an expansion would deprive her garden of needed sunlight.
- It will have adverse impacts on abutters.
- There should be a minimum house size.
- Conversion of a single family to a two family will diminish the area's property values.

- There is nothing in the Zoning Bylaw proposal requiring the subject single family to be historic or large.
- Have Route 116 property owners been notified?

The Town Planner and Planning Board members responded by noting:

1. The type of items that would meet the “public safety” provision – such as a second means of egress.
2. The Board has no desire to expand the conversion option to all of the Residence A-1 zoning district. Previously the Board made that proposal but is no longer proposing nor supports such a change.
3. Explained that the Board considers opposition and will always consider valid reasons but will not act in an arbitrary and capricious manner.
4. While a two-family dwelling may be more affordable, this proposal does not require converted dwellings to be “affordable”; rather the market would decide the affordability.
5. The proposal has a very specific target area based on a detailed analysis which shows this portion of the Residence A-1 district Route 116 to be a mixture of single-family, two-family, three-family, four-family, multifamily, office, funeral home, and other uses. And adjoining the Residence A-1 district in this area are a variety of other uses including the Village Commons, an auto repair business, and educational and religious institutions. Thus, the Board is not proposing to allow the conversion in a single-family neighborhood but along a relatively busy mixed use corridor.
6. Sometimes the highest and best use for a building is a two-family dwelling.
7. The Planning Board is looking to the Town’s needs not just for today but for years in the future.
8. The existing bylaw allows demolition of a single family dwelling and construction of a new two-family dwelling which would likely be more out of character with the area.
9. The written consent provision is not constitutional and is not likely an enforceable provision.
10. The issue of sustainability was significant in the Master Planning process. This proposal promotes sustainability.
11. There are many large houses in this corridor which could be converted.
12. Requiring a minimum size would not be best for older structures since their layout is typically not conducive to an equal division of the floor space.

**RECOMMENDATION:** The Planning Board, at their October 19, 2015 meeting, unanimously voted to proceed to the November 9<sup>th</sup> public hearing and the Special Town Meeting with this article. Following the close of the November 9, 2015 public hearing, the Planning Board unanimously voted to recommend that Town Meeting adopt the proposed amendment as drafted and approved the Report to Town Meeting.