

Article 27 :Use Variances Amendment

To see if the Town will vote to amend the Zoning Bylaws Section 300-12.5, Variance to eliminate the absolute prohibition of Use variances found in Section 12.5.

By deleting the last sentence of paragraph one in entirety, which now reads:

“A variance may not authorize a use not otherwise permitted in the district in which the land or structure is located.”

Replacing it with:

“A Special Permit may authorize a use not otherwise addressed in the Bylaws; a Variance may authorize a use specifically prohibited in the Bylaws.”

And relocating this sentence to Article 4 (“Use Regulations”), Section 300-4.2 as a new subsection A.

Or to take any other action related thereto.

Select Board for the ZONING BYLAW WORKING GROUP

INFORMATIONAL SUMMARY: For more than 40 years our bylaws allowed use variances in cases where the Bylaws were silent on the specific use for which approval was being requested, provided that an applicant could convincingly demonstrate that the proposed use was in the public interest. In 2001, a motion on the floor of Town Meeting was passed--- with no vetting by any Town board--- prohibiting variances in all districts for all unmentioned uses.

This has had a number of unintended consequences where proposed uses are not clearly covered by the definitions found in Section 300-4.2 (Table of Use Regulations). A case in point was the dog grooming/washing proposal on Chief Justice Cushing Highway ---a use which was nowhere defined or mentioned in the Bylaws. The 2001 amendment left the ZBA with no wiggle room: it had to, by law, deny that proposal under the established principal that “what is not covered is not permitted”. After almost 2 years this was resolved (happily) by adding a new definition to Section 4.2 at Town Meeting but the process was slow and expensive for both applicant and the Town, since it required State approval.

More importantly, a number of commonly-accepted uses are unmentioned/undefined in our bylaws: Inns, Assisted Living facilities, Elderly Housing, Group Homes (for people with physical or social disabilities), and detached “Mother-in-Law” apartments to name but some. For whatever reason, these housing types which exist today were left off the Table of Uses back in 1978; not only does this omission make them technically illegal in Cohasset, but the Zoning Board is legally prevented from correcting such oversights when relief is requested.

The Special Permit process already in place ---which requires findings of neighborhood compatibility, public safety and health, noise, open space and so forth --- should once again apply to undefined/unmentioned uses. Variance tests-- which are appropriate only when a use is specifically not allowed--- are quite stringent by themselves, and when combined with the scrutiny of the public hearing process, it is unlikely that harmful consequences would result from restoring special permits and variances to the ZBA's usage "tool chest".