

Summary of Proposed Zoning Bylaw Amendment Articles for May 2024 Annual Town Meeting

There are seven articles on the Annual Town Meeting warrant regarding proposed changes to the current Essex Zoning Bylaw. The proposed changes build on the work from the 2023 Spring & Fall Town Meetings, adding clarity and detail to provide stronger protections for residents and businesses. Changes proposed in Articles 17 to 20 apply specifically to Special Permits. Each article is summarized below.

Article 14: Dimensional Change in the Downtown District

The original setback for residential and business uses in the Downtown District was set at 0 to 25 feet to accommodate existing buildings within this setback range. The proposed change would regulate the setback for new buildings or buildings that change use to a more reasonable setback of 7 feet within the Downtown District. Existing buildings and new buildings for existing uses would be grandfathered to keep the original setback requirement.

Article 15: Update the Purpose & Intent of the Zoning Bylaw

It is standard in most towns in the state for a Zoning Bylaw to begin with the Purpose and Intent. This article proposes to expand the existing Purpose and Intent to clarify the qualities of the Town that the Bylaw works to preserve and protect. Articulating these qualities within the Bylaw would help establish standards to which a regulating authority (e.g., Planning Board, Zoning Board of Appeals, etc.) can point in making decisions regarding property use, as well as providing defense of these decisions against challenges.

Article 16: Add a section on Limitations on Permitted Uses

A zoning bylaw typically articulates the allowable property uses in a town by explicitly listing those that are permitted, with the implication that uses *not* listed are not permitted. The proposed change would explicitly clarify that if a use is not listed within the Bylaw as a permitted use, then it is in fact *not* permitted.

Article 17: Add General Provisions to Special Permits and renumber accordingly

The Special Permit process is generally reserved for uses that are allowable in Town but are not permitted “by right.” To obtain a Special Permit, an applicant must demonstrate to the Special Permit Granting Authority (SPGA, which is the Planning Board in Essex) that the proposed use is not detrimental to the surrounding area or the Town in general. As part of the process, state law requires that abutters be notified, that a public hearing be held, and that the SPGA write an official decision that is then recorded with the property deed. The SPGA has the authority to deny an application, if in its estimation the proposed use is demonstrably detrimental, with sound evidence of the adverse effects.

Section 6-4.3 currently includes only a list of the uses that require Special Permits. The proposed change would add a section of General Provisions into the established section on Special Permits to clarify features of the process and detail potential criteria that may be used to write a Special Permit decision. The proposed changes would provide the Planning Board with guidelines for their work and would also inform applicants about the features that the Planning Board, working to protect the Town character, will look for in an application.

The article also proposes a renumbering of the section to accommodate the newly added language.

Article 18: Update Special Permit for Personal Wireless Service Facilities (PWSF) section

The current Bylaw section regulating radio, telecommunications, cellular and television facilities is outdated. The proposed change would replace the existing use title and language with a focus on Cell Towers (PWSF) in particular. This would provide a more robust, complete and clear Bylaw that addresses unique characteristics of PWSF installations. The proposed language clarifies considerations the Planning Board may use in writing a Special Permit decision and that an applicant should be prepared to address. Note that the only proposed changes to the actual standards is to increase the distance from a residential property from 500 feet to 600 feet, and to require that the distance from schools, parks, and athletic fields be 1000 feet.

Article 19: Special Permit Use for Adult Entertainment Uses

Since adult entertainment uses are protected under state free-speech laws, a town cannot disallow such uses. Therefore, requiring a Special Permit is the most effective way for the Town to regulate and limit these, to the extent permissible. The proposed change adds Adult Entertainment Uses to the list of those that require a Special Permit and clarifies criteria that the Planning Board may use in writing a Special Permit decision and that an applicant should be prepared to address.

Article 20: Additional Uses to require a Special Permit

Some property uses are considered to potentially have a negative effect on surrounding neighborhoods to the extent that requiring a Special Permit is justified for the protection of residents and businesses. The proposed change would add eight (8) additional property uses, as listed in the warrant, to those that require a Special Permit to establish and/or build. These uses have repeatedly been raised as potentially concerning by residents, members of the Planning Board, and/or members of other Town boards. Note that while the SPGA has the authority to deny a permit, it can only be for clear and defensible reasons, and applicants who are denied may seek relief through the Zoning Board of Appeals.