

The Mystery of how an NP got to be an S for the BV and CR Zoning Districts

I recently searched for a 2003 or 2004 copy of the Topsfield Zoning Bylaw (the Bylaw) to research the mystery of how the 1993 ATM vote to limit the siting of nursing homes to the IRA and ORA and their respective overlay zoning districts seemed to have gotten lost. At the library I found copies of Beverly Guarino's copy of the Massachusetts' AG certification of the 2004 ATM votes. That year the Table of Use Regulations was redone in its entirety *and everything previous to that was repealed*. The part of interest of this Table is seen in the attachment to this document. In the definition section of the bylaw that was also amended is a definition of "Hospital" that included normal medical institutions, sanatoria, and nursing homes, and clinics. Table 3.02, entry 2.14 indicates that all such facilities as listed under the term "Hospital" were NP in the BV and CR districts. Along came the 2005 ATM and its bylaw amendments. First the definition of "Hospital" in an effort to conform to the Industrial Classifications Manual was amended to be far more restrictive encompassing only facilities strictly devoted to medical procedures. Nursing homes, care facilities, and sanatoria were otherwise not defined even though they were given a new subcategory – eg; entry 2.15 that used to be included in the old 2.14 in 2004. These were declared S in all districts, while entry 2.14 "Hospitals" were left NP as had been approved by the ATM in 2004.

This solves the mystery of how the 1993 ATM vote got lost. I have been assured that this is the real course of events and that the universal S of the current 2.16 should not have happened – in effect, an oversight.

This oversight however will need a vote at this ATM to reinstate the 1993 vote of NP in the CR and BV districts. You might wonder why that should be so. In the early nineties the Appleton Health center (now the Masconomet Healthcare Center) was considered by the ZBA for a Special Permit (S). This application turned out to be a very contentious permit procedure in which neighbors and the Town's group of professional architects registered their vehement disapprovals. The ZBA listened and disapproved the permit. This led to litigation that was resolved before it got to court by a ZBA/applicant agreement that turned into a court-ordered consent decree.

As a consequence both ZBA and Planning Board concluded that facilities such as these should not be sited in the more densely populated districts as the sheer size of building footprints (> 1 acre), and various servicing appurtenances such as sewage processing plants, and leaching fields, and the traffic generated by the operation of the facility would simply be incompatible with the CR and BV districts. Accordingly at the 1993 ATM the Planning Board recommended that the 1990 Table of Use Regulations in Article 3.02 of the Bylaw be amended to exclude "Community Facilities" from the CR and BV districts (NP), and it was so voted.

Will the proposed petition to restore that exclusion create any non-conforming uses in these districts? The answer is NO, as there have been no applications to the Zoning Board of Appeals for a Special Permit to establish a community care facility in Topsfield since the Masconomet Healthcare Center permit was granted.

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Attachments:

Permitted Uses	ORA	IRA	CR	BV	BH	BP
2.1 Day Camp for children	S	S	S	S	NP	S
2.11 Public Utilities	S	S	S	S	S	S
2.12 Civic and Social Organizations	S	S	S	S	S	S
2.13 Communications and telephone towers	See Article XII for restrictions and regulations.					
2.14 Hospital	S	S	NP	NP	NP	S

ZONES

Residential

ORA Outlying Residential and Agricultural

IRA Inner Residential and Agricultural

CR Central Residential

Mixed Use

BV Business Village

2004 Table of Use Regs. (excerpt)

1.47 Hospital

A building providing medical service including twenty-four (24)-hour in-patient services for the diagnosis, treatment or other care of human ailments; a sanitarium; sanatorium; clinic; rest home; nursing home and convalescent home.

2004 Hospital Definition (sec. 1.47)

By deleting the text of the new 1.49 Hospital (formerly 1.47) which provided: "A building providing medical service including twenty-four hour in-patient services for the diagnosis, treatment or other care of human ailments; a sanitarium; sanatorium; clinic; rest home; nursing home and convalescent home."

And inserting in place thereof the following: "An institution certified by the Joint Commission on Accreditation of Hospitals as an accredited hospital providing health services for in-patient and/or out-patient medical or surgical care of the sick or injured and including related facilities such as, but not limited to, laboratories, out-patient departments, central staff facilities, and staff offices which are an integral part of the institution."

2005 Hospital Definition (sec. 1.49)

	Permitted Uses	ORA	IRA	CR	BV	BH	BP
2.3	For Profit School	NP	NP	NP	S	S	NPS
2.14	Hospital	S	S	NP	NP	NPS	S
2.15	Nursing and Community Care Facilities	S	S	S	S	S	S
2.16	Conference and Event Facility	S	S	S	S	S	S

2005 Table of Use Regs. (excerpt)