

In 1990 the Zoning B'd of Appeals considered an application by Dr Arcidi for the establishment of a levelled care nursing home facility on the former Hall property on High Street in the CR district. This turned out to be a rather contentious application as the neighbors were very unhappy with the scale of the development, and a group of local architects were adamantly opposed to its appearance. The ZBA worked through the nine criteria of the site plan review process, and methodically worked through everyone but the ninth – the facilities' architectural compatibility with the neighborhood. We ran into a stalemate as the applicant refused to amend its design and the neighborhood and the group of architects refused to agree to the design as seen in the plan. The ZBA therefore denied the application upon which the Town promptly found itself in litigation over the denial. A year later the Arcidis and the ZBA agreed to a mitigation in which an architect acceptable to both parties reviewed the plans to suggest changes if required. He did – and his recommendations became a court-ordered consent decree. The Masconomet Healthcare Center is the result of that consent decree.

As a result of this rather strenuous experience, the Planning B'd and the ZBA agreed that it is best for the welfare of Topsfield's residents to limit the siting of nursing homes to the IRA and ORA and their respective overlay BH and BP districts. This became a 1993 ATM warrant article (#19) that was overwhelmingly approved (129 to 21) – *see page 2*.

In 2004 Art. III, sec. 3.02 the Table of Permitted Uses was completely overhauled in an ATM warrant article that repealed the *entire* previous Table and substituted therefore a new one that was adopted by ATM vote. In the Table entry 2.14 "Hospital" was listed as "NP" (not permitted) for the BV and CR districts and "S" (Special Permit) for the remaining zones. In addition the term "Hospital" was defined as a catch-all for the usual hospital, for nursing homes, for sanitarium, and for clinics and rest homes. This was in fact entirely consonant with the 1993 ATM vote.

Then in 2005 the Zoning Bylaw was again amended at the ATM. This time the definitions of the various land uses were amended to bring them into alignment with the **Industrial Classification Handbook** to facilitate the job of our Building Inspector who also works with the Commonwealth's building regulations and standards. This changed the definition of "Hospital" to one that is "an accredited facility for diagnostic and medical procedures"; it remained entry 2.14 and given an "NP" in the CR and BV districts and an "S" in the remaining districts. The rest of the former "Hospital" catch-all became a separate Table entry 2.15 labelled "Community Care Facilities" given an "S" in all zoning districts. I claim that this was an oversight as there was no language in the 2005 ATM warrant article to indicate a change of use permission for community care facilities from NP to S in the CR and BV districts seen in entry 2.15 was being proposed.

My petition therefore seeks to reinstate the former intent of the 1993 ATM vote within the framework of the new use definitions. I note that this amendment will only affect the Masconomet Healthcare Center as there are no other care facilities in the BV or CR districts at this time. As for the suitability of properties in the BV and CR districts, there are a number of large lots of 5 acres or greater that could accommodate a community care facility as these typically have foot prints of 30,000 sq.-feet or greater and also require accessory buildings and large parking lots. Thus these facilities are of a scale that is incompatible with the half-acre zoned districts and they generate a substantial traffic as well.

This petition gives Topsfield's residents the opportunity to explicitly vote to retain the 1993 ATM restriction or to permit by Special Permit the siting of community care facilities in all zoning districts.

## Detail of the 1992-3 Annual Town Meeting Report

### Article -19

#### ARTICLE NINETEENTH: REPEAL OF NURSING HOME AMENDMENT

The Finance Committee recommended and the Town voted: 129 in favor and 21 opposed, after some discussion, to repeal the Amendment voted in the 1990 Town Meeting (Article 37) which modified the "Zoning Bylaw of the Town of Topsfield, Massachusetts" to permit land in the Central Residential District and any buildings or structures constructed or located thereon to be used for a nursing home by issuance of a Special permit; by deleting from the "Zoning Bylaw of the Town of Topsfield, Massachusetts", Table of Use Regulations, Community Facilities Line 10, the "S" under the column "Residential CR".

Holger Luther

March 19, 2019