

Planning Board Report
Municipal Use Zoning Change
April 14, 2025

Background

In accordance with Massachusetts General Law (MGL) Chapter 40A Section 5 (the statute), the Boxborough Select Board (Select Board) initiated a proposed zoning bylaw amendment, referred to as Article 1 “Municipal Governmental Zoning Allowed Across All Zoning Districts” for the May 12, 2025 Special Town Meeting warrant. As required by statute, the Planning Board conducted a public hearing and delivers this report.

Article 1 was referred to the Planning Board by vote of the Select Board on February 24, 2025, sent to the Planning Board on February 27, 2025, and a public hearing was scheduled for March 17, 2025. A legal notice for this public hearing was posted on February 28 and March 7, 2025. Before holding the hearing, the Planning Board made several inquiries to Special Land Use Counsel. A report is required to be filed within 21 days following the close of that hearing, per MGL Ch. 40A, Sec. 5, and because the hearing was opened on March 17, 2025, continued to and closed March 31, 2025, this report must be submitted no later than April 21, 2025.

The need for a new firehouse has been investigated and reported on by various committees for years. However, the Select Board’s concern to initiate their Article arose when the Building Inspector informed them that in his opinion the Zoning Bylaw does not specifically list the use of a fire house in any zoning district. The Building Inspector further noted that the word “Governmental” is left out of the definition of “Education, Governmental or Religious” in the Zoning Bylaw, “therefore not allowing the fire house to be constructed anywhere in Boxborough”.

The consensus of the Select Board, Town Administrator and Town Counsel was to resolve the conflict through the inclusion of a “Municipal Governmental” use to all zoning districts, and to provide a corresponding definition for the same term.

Testimony Received

The public hearing was opened on March 17, 2025 and over 65 people attended, including members of the Planning Board. The hearing was continued on March 31, 2025 and over 55 people attended, also including members of the Planning Board. The following documents were entered into the record for review by the Planning Board:

- Article 1, as proposed by the Select Board;
- Zoning Opinion of the Building Commissioner;
- The opinion of Town Counsel on the Building Commissioner’s opinion;

- Individual Zoning Bylaws and excerpts from 1965 and 1990-1993;
- Warrant Articles and proceedings of Town Meeting, including Article 1 of 1965, Article 31 of 1991, and Article 32 of 1993;
- A legal opinion prepared by special land use counsel Adam Costa, in response to questions posed by Planning Board members and Mark Barbadoro, revised through March 17, 2025;
- Oral testimony provided by several participants throughout the hearing process;
- Written correspondence from Al Murphy, Elaine Olmstead, John Markiewicz, Les Fox, and Mark Barbadoro.

Board Decision

Following the close of the Public Hearing on March 31, the Planning Board recommended Article 1 by a vote of 3 to 2.

Majority View

The Planning Board's Majority reviewed closely the Building Inspector's decision, the wording of the changes implemented by the 1991/1992 Warrant and the logical inconsistencies it created; considered that the wording might be the fault of a typographic error; inquired of a member of the 1991/1992 Planning Board as to the intent of the recodification (to clarify and make more user-friendly, only); compared other adjacent Town's Zoning Bylaws and where they provided for Municipal uses. At the conclusion the Majority determined that the omission was not intended. The hearing was well-attended and citizens spoke to both sides of the argument. At the conclusion a Majority of the members voted (1) it was their administrative duty to hear the initiative Article proposed by the Select Board and (2) it was their finding that the earlier omission was unintended, (3) the wording of the proposed Article was sufficient to restore the previous, intended locations for "municipal" or "governmental" uses to avoid inconsistencies within the Zoning Bylaw.

In the end, the Majority (1) did not think it was appropriate to commandeer the article of the Select Board which was fair on its face to be submitted to Town Meeting and (2) neither did the Majority feel that approving the article in any way obstructed the Planning Board from pursuing a further refinement of the location of municipal or governmental uses in Town. Therefore the Majority recommends both the approval of this Article by Town Meeting, and the further pursuit and development by the Planning Board of a careful identification of areas for locating municipal and governmental uses in Town.

The Majority believes failure to approve the proposed bylaw amendment may result in unintended consequences, putting residents and their property values at risk.

The Majority feels that further investigation is warranted, but adoption of Article 1 does not preclude the goals sought by the Minority.

Minority Option

The Minority of the Planning Board (2 members) does not approve the adoption of the bylaw amendment as written at this time.

The Minority believes the Planning Board has not had enough time to conduct the necessary review of the proposed bylaw amendment to ensure that it aligns with the current bylaws and does not conflict with other sections of the bylaw. The proposed bylaw amendment may result in unintended consequences, putting residents and their property values at risk. The Minority believes the Planning board has not obtained sufficient public input due to the rush to get this article to this Town Meeting.

The Minority believes the bylaw amendment, as proposed, broadly impacts every resident in the town by allowing any kind of Municipal Use in any zoning district, so long as it is deemed to support a “public service.” The Town has changed and grown significantly from when the language allowing Municipal Uses in the Agricultural and Residential District was added to the zoning bylaw in the 1960’s. What was appropriate during that time may no longer fit the needs of the Town today.

The Minority believes with only 18 days from the date the proposed bylaw amendment was referred to the Planning Board to the start of the public hearing, and just one day from the close of the public hearing to get a recommendation into the printed warrant for Town Meeting, the Planning Board has not completed a thorough review of the proposed language in the article, as is the Board’s practice when reviewing any zoning article.

For example, the first paragraph of the bylaw amendment proposes to “add Municipal Government as allowed use across all districts...” The Minority believes this language is not compatible with the terminology in the Use Regulation Schedule for Principal Uses identified in Section 4.1.3 (e.g., “Y- a permitted use,” etc.) and does not specify whether such use would be a permitted use “by right” or authorized under a Special Permit granted by a Special Permit Granting Authority.

Additionally, the Minority believes this proposed zoning bylaw amendment includes a new special definition (“Municipal Governmental”) that was not in prior zoning bylaws. When a special definition is introduced, it should be used when interpreting the zoning bylaw. Elsewhere in the zoning bylaw, the terms “governmental” and “municipal” still exist. The Minority believes this could create a potential conflict when interpreting the zoning bylaw.

In the opinion of the Minority, upon closer review it is evident that the proposed zoning bylaw amendment does not “restore what has been lost” during the recodification in the

early 1990's. A review of the zoning bylaw history identifies that "Municipal Use" was allowed "by right" in some, but not all, zoning districts prior to the recodification in 1991. The 1991 recodification established a table of uses, identified as Table 2233 (Utility and Public Service Uses). The term "Religious, Educational, and Municipal Use" was not included but instead introduced the category "Educational, Governmental, or Religious Use." This table allowed for Educational, Governmental, or Religious Use across all zoning districts "by right;" however, no special definitions were provided for either of these terms.

In 1993, Town Meeting voted on the insertion of the special definition of "Educational, Governmental or Religious Use" into the zoning bylaw, which restricted the allowed uses under Educational, Governmental or Religious Use to education or religious use only (Section 6200 Definitions). The article passed overwhelmingly in 1993 Town Meeting (Article 32) and appears to be the mechanism by which "Governmental" use was removed from the uses allowed "by right", not the result of the recodification in 1991.

The Minority believes that these are examples of the work that the Planning Board should do before recommending any zoning article.

The Minority recommends that Town Meeting vote "No" on this article as proposed and allow the Board to take the necessary time to gather public input and conduct further research to define and determine what Municipal Uses are best located in which Zoning Districts. Only after that deliberate process, will the Planning Board be properly prepared to bring forth a zoning article that is unambiguous, well-defined, and better protects residents from unintended consequences.

Respectfully submitted,

Boxborough Planning Board

For the Majority:

Mark White (Chair)
Kathleen Vorce
Richard Guzzardi

For the Minority:

Rebecca Verner (Clerk)
Cindy Markowitz