

Explanatory Statement

There appears to be an ambiguity in the zoning bylaw with respect to Non-Profit Religious or Educational Purposes in a Natural Resource District. The purpose of this Article is to clarify that the intent of the bylaw is to preserve natural resources for conservation and recreational uses by applying the Natural Resource District restrictions and prohibitions of uses equally to all people and entities, including non-profit institutions.

The apparent ambiguity is that on the one hand, the Table of Use Regulations, Table 1, designates Non-Profit Religious or Educational Purposes as “P” for “permitted” within a Natural Resource District. On the other hand, there are at least three reasons why such an interpretation is not appropriate and is in contradiction to the intent of the bylaw: (1) the definition of Non-Profit Religious or Educational Purposes merely tracks the language of M.G.L. c. 40A, § 3, the so-called Dover Amendment, which suggests that the intent of the bylaw is to permit such uses only to the extent required by the Dover Amendment; (2) the designation in the Table of Uses is in direct conflict with Section 4.10, which limits and restricts permitted uses in a Natural Resource District irrespective of whether such uses are for non-profit religious or educational purposes; and (3) Section 4.13 makes clear that in the Table of Uses, “uses designated by ‘P’ are permitted in the districts shown, subject to the provisions of this bylaw”, meaning that the provisions of Section 4.10 govern uses within a Natural Resource District.

This Article will clarify these specific issues in three ways. First, this Article will amend the definition of Non-Profit Religious or Educational Purposes to make clear that the bylaw does not extend the rights of non-profit institutions beyond those required by the Dover Amendment. The Article also corrects non-substantive drafting errors that were in the original definition.

Second, this Article will change the Table of Uses designation for Non-Profit Religious or Educational Purposes within a Natural Resource District from “P” for “permitted” to “N” for “not permitted”. This change will bring the Table of Uses in harmony with the plain language and intent of Section 4.10.

Third, in the Table of Uses, the row for “Non-Profit Religious or Educational Purposes” refers to its definition. In addition to clarifying that definition as discussed, this Article will add a reference note that will follow the Table of Uses as well. This note will make clear that a non-profit institution is entitled to all of the same permissible uses in a Natural Resource District as any other person or entity and that such uses are governed by Section 4.10. In other words, it will clarify that the intent of the bylaw is that a non-profit institution does not receive any special or discriminatory treatment. The bylaw would not permit such an institution to do anything in a Natural Resource District that everyone else is prohibited from doing and it would provide for the same treatment under Section 4.10 to all persons and entities. The reference note also will make clear that uses for Non-Profit Religious or Educational Purposes are allowed in a Natural Resource District to the extent required under the Dover Amendment.

Although Section 4.13 is already clear that in the Table of Uses, “uses designated by ‘P’ are permitted in the districts shown, subject to the provisions of this bylaw”, clarification of the potential ambiguity through this proposed Article will benefit the Town moving forward. Furthermore, the Attorney General has approved zoning bylaws with similarly worded prohibitions on religious and educational uses in zoning districts intended to conserve natural resources. For example, the Town of Webster’s Zoning Bylaw and Table of Uses prohibits religious and educational uses in its conservancy district but includes a footnote similar to the Note proposed here that such uses may be protected to the extent required by Dover.

These changes will clarify that the provisions of Section 4.10 regarding Natural Resource District uses and restrictions apply to everyone, equally across the board and that the rights under the zoning bylaw for non-profit religious or educational purposes extend only so far as required by the Dover Amendment and no farther.

(Article follows on next page)

ARTICLE ___ To see if the Town will vote to amend the Nahant Zoning Bylaw to clarify the definition of Nonprofit Religious or Educational Purposes by making the following changes:

Item 1. Amend the Definition of **Nonprofit Religious or Educational Purposes** by (1) inserting “**only to the extent required by M.G.L. c. 40A, § 3;**” following “...by a nonprofit educational corporation shall be permitted in any district”; (2) changing “Section 4” to “**Section 5**”; and (3) deleting “parking” and inserting “**and parking as described in Table 6-1**” following “for each district”.

The definition would thereby read in full:

Nonprofit Religious or Educational Purposes: Land or structures for religious purposes or for educational purposes on land owned or leased by the Commonwealth of Massachusetts or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation shall be permitted in any district **only to the extent required by M.G.L. c. 40A, § 3;** provided, however, that such land or structures shall be subject to the regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, and building coverage requirements as described in Table 2 of **Section 5** for each district **and parking as described in Table 6-1.**

Item 2. Amend **TABLE 1 TABLE OF USE REGULATIONS** by inserting inside the parenthesis “**and Note 3 below**” following “see definition” for “Non-profit religious or educational purposes” and changing the designation letter from “P” to “N” in that row under the column labeled “NR”.

Item 3. Amend **TABLE 1 TABLE OF USE REGULATIONS** by inserting the following after Note No. 2:

3. Uses or structures for Nonprofit Religious or Educational Purposes are allowed in a Natural Resource District to the extent provided in Section 4.10 of this bylaw or to the extent required by M.G.L. c. 40A, § 3.