

AMHERST PLANNING BOARD
Wednesday, May 7, 2014 – 5:00 PM
Town Room, Town Hall
MINUTES

PRESENT: David Webber, Chair, Stephen Schreiber, Rob Crowner, Bruce Carson, Richard Roznoy, Kathleen Ford, Greg Stutsman and Sandra Anderson

ABSENT: none

STAFF: Jonathan Tucker, Planning Director
Christine Brestrup, Senior Planner

Mr. Webber opened the meeting at 5:05 PM.

I. MINUTES

Mr. Roznoy MOVED to approve the Minutes of April 16, 2014. Mr. Stutsman seconded and the vote was 8-0-0.

II. PUBLIC HEARING – ZONING AMENDMENT

A-18-14 Zoning – Inclusionary Zoning – Alternative Version (Planning Board)

To see if the Town will amend Article 4, Development Methods, Article 12, Definitions, and Article 15, Inclusionary Zoning, of the Zoning Bylaw in order to expand the residential uses and developments required to provide affordable housing, selectively modify the rate of such housing to be provided, simplify density bonuses, create new cost offsets including dimensional modifications, re-organize inclusionary provisions of the Bylaw, and make other related changes.

Mr. Webber recited the preamble and opened the public hearing. He reminded the Board and members of the public that the Planning Board was meeting early to accommodate the Town Meeting session scheduled for this evening.

Mr. Crowner reported that the Zoning Subcommittee had not met to review the version of the article that would be considered this evening. He summarized the contents of tonight's version. The article would reform the Inclusionary Zoning Bylaw and extend the mandate to provide affordable housing to all residential uses and development methods, regardless of whether a Special Permit is required. It would extend the mandate to "by right" uses. This may provoke legal problems with takings and the imposition of a financial burden on developers. Therefore the Board seeks to include cost offsets to compensate developers for the expense of providing affordable housing.

Mr. Webber announced that the Board is now reviewing zoning amendment A-18-14. This zoning amendment is offered as a clarification of an alternative version of Article 24 that might come before Special Town Meeting on June 2nd. He read the legal ad for A-18-14.

Mr. Crowner reported that the alternative version of Article 24 would extend Inclusionary Zoning to all residential uses and development methods. It would add a cost offset provision in order to make the addition of affordable units financially feasible to developers. When affordable units are actually provided, the new version would provide cost offsets in the form of additional market-rate units or additional room to construct units. There are a variety of ways to provide affordable units. Mr. Crowner listed the four methods. He noted that the requirements would range from 7.5% to 15% for the different zoning districts. The Inclusionary Zoning amendment restricts the affordable units to low income individuals and families making 80% or less than the AMI (Area Median Income) as established by the

Department of Housing and Urban Development (HUD). It would remove density bonuses for Cluster Subdivisions and other development methods when affordable units are provided. The provisions of Inclusionary Zoning would be applied uniformly across all districts, development methods and residential uses. The alternative version includes changes with regard to its application in business zoning districts, especially the downtown. There would be additional cost offsets and lowered mandates. Since the drafting of the alternative version, other issues have been raised.

Mr. Tucker listed the documents in the Planning Board's packet. He explained further changes and described two versions of the alternative amendment:

- 1) The first version would limit the requirement to residential zoning districts and the BL/COM districts;
- 2) The second version would include the business districts where additional lot area is not required.

He presented a summary of the differences between the two versions and Article 24. He read from a document entitled "How the June 2 Special Town Meeting Inclusionary Zoning Article (All District Version) is Different from Article 24", listing the differences.

Mr. Tucker also reported that there were two issues driving the re-examination of Article 24 – 1) a Supreme Court case and 2) pending possible adoption of the Zoning Reform Act in Massachusetts. The proposed Massachusetts zoning reform includes provisions for Inclusionary Zoning, enabling it and requiring that communities establish a "nexus" between the need for affordable units and the imposition of affordable housing requirements. The alternative versions of Article 24 add a "nexus" statement under "Intent and Purpose".

Mr. Tucker summarized recent comments of Joel Bard, Town Counsel, with respect to application of the current Inclusionary Zoning Bylaw, which requires that affordable units be provided in developments which require a special permit.

Mr. Tucker also reported on the case of *Koontz v. St. Johns River Water Management District* in which a decision was made against the Water District. He explained that, in the opinion of Joel Bard, Town Counsel, the *Koontz* case does not change the landscape of the issue of imposing requirements like inclusionary zoning.

Mr. Tucker reported that the proposed Zoning Reform Act requires that communities establish a "nexus" between the requirement for affordable housing and the project being proposed and the requirement must be "roughly proportionate" to the impacts created by the development. It does not state how a community must do this. Mr. Tucker stated that the establishment of the nexus does not need to be made on a case by case basis. Mr. Bard has reviewed the proposed language of Amherst's "nexus" statement and feels that it is quite strong. It establishes a connection between the studies the community has done (the Housing Production Plan and the Housing Market Study) and the need for affordable housing.

Mr. Tucker also presented an adjusted calculation of an example provided by Jayne Armington, using Kendrick Place as an example, to show how the requirement for affordable housing and the payment of "fees in lieu" would affect a real project.

Mr. Tucker reported that the current draft language of the Zoning Reform Act allows for a two year period of adjustment for municipalities to come into conformance with new regulations regarding inclusionary zoning.

Mr. Tucker explained the current language of the Inclusionary Zoning Bylaw, which requires provision of affordable units in residential developments when a Special Permit is required. Some people interpret this to mean "any" Special Permit, but that was not the intent of the

Bylaw. Mr. Tucker presented the April 2005 Planning Board report to Town Meeting on the Inclusionary Zoning Bylaw in support of this interpretation.

Mr. Tucker noted that Town Counsel had issued a previous opinion [July 16, 2009] on the matter of whether affordable units are required for developments that require “any” Special Permit. Town Counsel’s opinion was that the Planning Department’s interpretation was “reasonable”, i.e. that affordable units would be required for developments requiring a Special Permit for the project itself, not in a situation where an ancillary Special Permit is needed for dimensional modification. In Mr. Bard’s opinion, it is up to the Zoning Enforcement Officer and the Permit Granting Body to interpret what the Bylaw means.

Mr. Tucker also noted that the Planning Board had received an email from Janet Keller raising concerns about the proposed language of Article 24 and the Board had also received a document from the Planning Department responding to Ms. Keller’s comments.

In conclusion, Mr. Tucker stated that the Planning Board seemed to have three choices with regard to Inclusionary Zoning:

- Choose the Residential-Districts-Only version;
- Choose the All-Districts version (and the town can explore changes and other non-zoning ways of providing affordable housing in the future);
- Request that Article 24 be referred back to the Planning Board.

Mr. Webber noted that the Planning Board had two versions before it this evening:

- Version dated 5/5/2014 and labelled “Inclusionary Zoning - Special Town Meeting”
- Version dated 5/5/2014 and labelled “Inclusionary Zoning - Residence Districts Only” (but really including BL/COM districts)

Mr. Tucker acknowledged that the title of the second version was in error and should include all districts that require additional lot area for each additional dwelling unit past the first one.

Mr. Webber reported that the Board had asked the Select Board to schedule a Special Town Meeting to have an opportunity to improve upon Article 24. The Board is now considering the changes that have been proposed by staff which may be presented to the Special Town Meeting.

Mr. Tucker explained the calendar leading up to the Special Town Meeting.

Mr. Stutsman explained that when it became clear that the business zones were controversial the Board moved in the direction of examining alternatives. One alternative was to separate out the central business district from the rest of the zoning districts and act on it separately (which he called “the donut approach”). Mr. Stutsman suggested bringing the two alternative versions to Special Town Meeting for consideration. Town Meeting could vote on them in sequence, with the less restrictive version (Residence Districts) being voted on first, and the more restrictive version (including the Business Districts) being voted on later. Mr. Tucker proposed another option which was to take up the version including the Business District first and then, if that failed, to take up the version including the Residential Districts and B-L/COM.

The Board did not proceed with either recommendation.

Vince O’Connor of Precinct 1 offered several comments about Inclusionary Zoning, including the following:

- He questioned the utility of the “nexus” statement as providing protection from litigation;

- The 2005 Planning Board report to Town Meeting had stated that the town only had the authority to impose Inclusionary Zoning on projects that required a Special Permit;
- The current Bylaw requires affordable units for residential activities requiring a Special Permit; this requirement should be applied to projects that require a Special Permit for dimensional modifications as well as use because modifications of dimensional requirements may determine whether a use can actually be built;
- Over the last few decades many uses have been removed from the Special Permit process;
- Multi-use buildings of 5 and 6 stories with commercial activities should be allowed by Special Permit;
- Mixed-use buildings add residential units to the town and should be allowed only by Special Permit;
- Developments in the downtown area don't need to provide parking so the requirement to provide affordable units is balanced by not having to provide parking;
- People who live in the new buildings downtown will have cars;
- Parking in the downtown area should not be a purely municipal responsibility;
- There will be demand for a new parking garage in the downtown as a result of these projects;
- If the town provides density bonuses for building affordable units, at a rate of 2 market rate units for 1 affordable unit, the town will fall behind on the 40B inventory for each project created;
- Presidential Apartments, which recently required a Special Permit to expand, provided 6 affordable units and received no bonuses;
- With the requirement for 10% affordable units, the town will remain above the 10% 40B threshold, if no bonus units are allowed;
- The direction of the alternative proposal is misguided, especially with regard to requiring fewer than 10% affordable units in the downtown area;
- The reduction in acreage from 5 to 2 acres in some residential districts for Cluster Developments is not a good idea;
- The fee-in-lieu of 1 x 80% of AMI (Area Median Income) proposed for the downtown area is not sufficient;
- In conclusion, put more residential developments into the Special Permit category.

Sarah la Cour, Executive Director of the BID and a resident of Precinct 9, offered the following comments:

- The two alternative versions being presented tonight were very different from the version of Inclusionary Zoning proposed on April 16th and different from the version included in the email about tonight's meeting;
- The BID doesn't believe that the cost offsets offered in these versions are equitable; a 6th story may not be feasible;
- Options that are outside of the Planning Board's purview and outside of the realm of the Zoning Bylaw need to be explored;
- The Planning Board should recommend to Town Meeting that Article 24 and its alternative versions be referred back for further study, to reach a "win, win" situation for the whole town.

Jim Oldham of Precinct 5 made the following comments:

- He had recently attended a session at a national housing conference in which presenters stated that municipalities will always hear from developers that costs are

too high and offsets are too low; he recommended that the Board ask for actual numbers from the BID and developers;

- He cautioned against giving in to special interests and expressed his opposition to setting the level for affordable units in the downtown area below 10%; downtown is the most attractive area for development;
- The alternative version of Article 24 dealing with Residential Districts only will not pass;
- The Board should rethink recent amendments like adding dimensional offsets and not lower the requirement below 10% for the downtown area;
- Ensuring affordable housing is essential;
- Fear of Zoning Reform is overstated since the town will have two years to comply with requirements;
- There are many versions of the Inclusionary Zoning article on the table, which makes it hard for the public to engage with this article in a thoughtful, informed way;
- Staff has received a lot of input from a small group of business owners, which affects the recent versions of the article that have been proposed;
- The Board should bring a fair, strong, balanced proposal to Town Meeting, without excessive offsets;
- Cambridge has an Inclusionary Zoning Bylaw that includes a 1:1 density bonus and no “payment-in-lieu” provision;
- Burlington, VT, has an Inclusionary Zoning Bylaw that begins at a threshold of 5 units and requires 15% affordable units.

Joan Burgess of Precinct 9 stated that she has been to many ZSC and Planning Board meetings and has tried to understand Inclusionary Zoning but finds it very confusing. She asked how Town Meeting members would be able to absorb it. She urged the Board to consider recommending referral back and noted that if the state legislation is passed it will give the town a good basis to proceed. She urged the town to enforce the Inclusionary Zoning Bylaw for all projects that require Special Permits.

Niels la Cour of 124 North Whitney Street commented as follows:

- He commended the Planning Board for its recent work, but asserted that Amherst has a housing crisis across all levels of affordability, because the supply hasn't kept up with the demand;
- The versions of Inclusionary Zoning presented tonight will not help to provide workforce housing;
- Based on Mr. la Cour's research, he asserted that all Inclusionary Zoning Bylaws do the following:
 - They increase costs for developers;
 - Because of increased costs, they suppress the supply of housing;
 - They often don't provide affordable units.
- According to his research, 43% of communities in Massachusetts with Inclusionary Zoning Bylaws have produced no affordable units;
- Developers' funding sources do not want to invest in projects if profit is diminished;
- Growth of housing in Amherst has been in the outlying areas; the town hasn't been able to direct growth to the downtown;
- He urged the Board to refer back all versions of the Inclusionary Zoning Bylaw amendments for further study;
- The more restrictive the Bylaw is, the less likely it is to be successful;
- The town needs to include tax incentives to encourage affordable housing;

- Inclusionary Zoning needs to work financially for the development community, otherwise affordable housing won't be built;
- The Town and the University are about to launch a Town Gown planning process; the consultant in this process has a lot of expertise in this area;
- The town can both protect the quality of life and provide housing for those who want to live here.

Melissa Perot of Precinct 1 questioned the reference to residential zoning districts in the title of one of the alternative versions, since the B-L/COM districts are also included in that version. She urged the Board to turn this article and its alternative versions away. She asserted that this effort to amend the Inclusionary Zoning Bylaw, while Town Meeting is going on, is a burden on the public.

Maurianne Adams of Precinct 10 agreed that student and affordable housing were urgent needs, but she asserted that there were other options to providing housing, through public-private partnerships and tax incentives. She expressed concerns and offered comments as follows:

- If the town moves forward with an amendment to the Inclusionary Zoning Bylaw, the B-G zoning district must be part of Inclusionary Zoning;
- There are concerns about sending the amendments back to the Planning Board because of the current interpretation about Article 15, that affordable units are only required when a Special Permit is needed for the use and not for dimensional modifications;
- There are concerns about sending the amendments back because then the town is left with the current Article 15, which does not impose responsibility for providing affordable units on all residential developments;
- Ms. Adams would rather "get it right" at this time or apply the existing Article 15 to all developments that require Special Permits.

Mr. Webber reminded the Board members about Footnote "a" in the dimensional table that allowed the Board to grant dimensional modifications to the developers of Olympia Place via a Special Permit. He noted that Article 15 had been consistently applied since 2005 to projects that require a Special Permit for use and that the Board cannot at this time begin to interpret it differently.

Mr. Tucker noted that, if the Board decided to refer Article 24 back, the Board could then amend Article 15 [Inclusionary Zoning] of the Zoning Bylaw to state that it applies to any Special Permit or only to the Special Permits for the use of a property. The current interpretation of Article 15 has been applied to Boltwood Place and Olympia Place, so the town has developed a consistent pattern in its application. One option for the Board is to make it clear how Article 15 applies, by making a simple amendment to the first line of Section 15.10 of the Zoning Bylaw.

Mr. Webber acknowledged that Ms. Perot's comment about the Residence District Only had been correct and that the title should include reference to the B-L/COM zoning districts. Mr. Tucker agreed.

John Fox of Precinct 10 supported the amendment to Article 15 and stated emphatically that the town is desperate to have affordable housing. Affordable housing should be included in every substantial development if it is over a certain number of units and we should eliminate reference to Special Permits in that requirement.

Mr. Webber noted that only requiring that 7.5% of the units be affordable would leave the town at a loss for affordable units.

Mr. Schreiber stated that Inclusionary Zoning is only “one tool in the tool kit”, which will get us further along than we are now. Inclusionary Zoning can’t be the only way to address the issue of maintaining our 10% affordable housing inventory.

Mr. Tucker reminded the Board that the option to pay “fees in lieu” or to donate land was not without value, even if there was not an exact match with the value of affordable units. If the Housing Trust is established it would provide a regular source of income for the Housing Trust and help the town to apply for state grants.

Mr. Roznoy asked about the practical implications if Article 24 or its alternatives are referred back to the Planning Board by Town Meeting. He noted that the town has already lost an opportunity to gain some affordable units in sizable developments.

Ms. Brestrup reported that a project that is currently in the works with a reported number of units of around 100 in the downtown area would be required to supply 8 affordable units with a 7.5% requirement. If the zoning amendment were not passed, in the short run, there would be a loss of about 8 affordable units, to the best knowledge of Planning Department staff.

Mr. Roznoy noted that if an Inclusionary Zoning amendment is adopted by Town Meeting at this time, it can be amended in the future.

Ms. Anderson shared the concerns of the public and of her colleagues. But she noted that if the audience of the Planning Board meeting, who have been attending many PB meetings recently, were confused, then Town Meeting members would be confused. She recommended asking to have the current article deferred to Fall Special Town Meeting and amending the existing Article 15 now to make it more understandable and puts something in place for the next project that comes along. She enumerated recently approved projects – Olympia Oaks, Olympia Place, Kendrick Place, Trolley Barn and the LaVerdiere building in South Amherst. She noted that there were a lot of units coming online and only one of them [Olympia Oaks] had any affordable housing.

Mr. Schreiber urged Board members to go ahead with the full Inclusionary Zoning amendment. He expressed confidence that the Planning Board could explain it to Town Meeting. He disagreed with changing the existing Article 15 and thought it would scare developers from requesting Special Permits for dimensional modifications for “by-right” [Site Plan Review] uses. Ancillary Special Permits for dimensional modifications work to provide a better streetscape for the town.

Mr. Carson and Ms. Ford agreed with Mr. Schreiber’s recommendation to move ahead with the full amendment.

There was further discussion about whether there was enough time to develop a good explanation for Town Meeting, to produce a Planning Board report and to do public outreach about an alternative version of Inclusionary Zoning before the upcoming Special Town Meeting.

Mr. Webber summarized as follows:

- The changes to Article 24 that have been proposed are substantial;
- The Planning Board did not see these changes until Monday (May 5th);
- The changes include several items that are new; he enumerated these new items;
- While he appreciates the hard work of the ZSC, there is not enough time to do an adequate process of review of the proposed changes before June 2;
- In his opinion, it is not prudent to move ahead with the alternative versions for Special Town Meeting this spring;

- The Planning Board's options are to recommend either alternative version to Town Meeting or to do nothing and let Article 24 stand.

Mr. Webber noted that the Planning Board had voted to recommend Article 24 to Town Meeting and that Article 24 still needs to be acted upon. He supports the Planning Board's original vote to bring Article 24 to Town Meeting for a vote and he is not prepared to recommend either of the alternative versions to Special Town Meeting.

Mr. Stutsman stated that the outcome of this meeting is to reaffirm, in his mind, support for Article 24 and to acknowledge that the proposed revisions require substantial further discussion. Concerns have been raised from both sides of the topic on Article 24 and on the proposed revisions. He recommends going ahead with Article 24 as it stands.

Ms. Ford MOVED that the Planning Board recommend referral of the alternative versions back to the Planning Board and that we reaffirm our commitment to take Article 24 to Town Meeting.

Mr. Carson asked if the Board would advocate for Article 24 and then come back in the fall with revisions.

Mr. Webber, acknowledging the negative comments from both sides of the public, stated that Article 24 did not have much of a chance of passing at Town Meeting, but it would be useful to find out from Town Meeting what the public thinks about Inclusionary Zoning.

Mr. Tucker suggested that the Planning Board go forward with Article 24 with the addition of the "nexus" statement.

Mr. Roznoy asserted that there was no substantial support for the nexus statement. He asked if Ms. Ford would amend her motion to separate the Board's support for Article 24 from the motion to refer back the proposals that were brought before the Planning Board today.

Mr. Schreiber clarified that there was nothing to refer back since the board had not voted to move the alternative versions forward.

Ms. Ford WITHDREW her motion, stating that her intent had been to take Article 24 to Town Meeting and acknowledging that the Planning Board will revisit the topic of Inclusionary Zoning in the fall in any event.

Ms. Ford MOVED to not move forward any of the new proposals that are before the Board tonight. Ms. Anderson seconded and the vote was 8-0-0.

Mr. Tucker reported that there were several weighty articles on the Town Meeting Warrant to be considered tonight before the zoning articles. He suggested that there be a procedural motion to move the zoning articles [Articles 25 through 30] to Monday, May 12th, at 7:05 p.m. Board members agreed by consensus to this suggestion. Mr. Schreiber agreed to make the motion to Town Meeting.

XIII. ADJOURNMENT

The meeting was adjourned at 6:35 PM.

Respectfully submitted: Approved:

Christine M. Brestrup
Senior Planner

David Webber, Chair

DATE: _____