

AMHERST PLANNING BOARD
Wednesday, April 13, 2016 – 7:00 PM
First Floor Meeting Room, Town Hall
MINUTES

PRESENT: Greg Stutsman, Acting Chair, Rob Crouner, Bruce Carson, Pari Riahi and Christine Gray-Mullen

ABSENT: Richard Roznoy and Stephen Schreiber

STAFF: Christine Brestrup, Interim Planning Director

Mr. Stutsman, Vice-chair of the Planning Board, chaired the Planning Board meeting in the absence of Mr. Schreiber. Mr. Stutsman opened the meeting at 7:09 PM.

I. MINUTES

There were no minutes available.

II. PUBLIC HEARINGS – ZONING AMENDMENTS

A-08-16 Zoning – Inclusionary Zoning (Petition – O’Connor et al)

To see if the Town will amend Articles 12 and 15 of the Zoning Bylaw to amend the definition of Affordable Housing in Article 12.24 to include only those dwelling units available to families and households with incomes of 80% or less of Area Median Income, and to amend several requirements of Article 15, Inclusionary Zoning, including to apply inclusionary requirements to any new residential development requiring a Special Permit for any aspect of a proposed use or development, including dimensional modifications.

Mr. Stutsman read the preamble and opened the public hearing.

Vincent O’Connor of Summer Street gave the presentation. He stated that he is a Town Meeting member from Precinct 1 and was a Town Meeting member when Article 15, Inclusionary Zoning, of the Zoning Bylaw, was adopted by Town Meeting in 2005. Mr. O’Connor reported that the adoption of Inclusionary Zoning occurred at about the same time that the Phased Growth Bylaw expired. During the presentation of Article 15 nothing was said to limit the wording of the Bylaw as presented. There was no explanation that it meant something different from what the words said. The words were clear, he asserted.

Mr. O’Connor reported that the first time that there was a discussion about the interpretation of Article 15 was during the public hearing for Boltwood Place, when the Planning Director interpreted the Bylaw to require affordable units when a Special Permit was required for use, but not for dimensional modifications. The Planning Board agreed with this interpretation.

Mr. O’Connor stated that since then there have been three projects by the same developer, resulting in about 200 dwelling units. These should have included 25 affordable units. Mr. O’Connor referred to One East Pleasant Street as an “egregious example”.

He stated that there have been two proposals to amend the Zoning Bylaw since Boltwood Place was approved, with the purpose of clarifying that the Bylaw meant “what the words say”. The current proposal is an attempt to correct a mis-interpretation of the Bylaw and to make other changes, some of which have been proposed by the former Planning Director and the Planning Board.

Mr. O’Connor described the changes proposed to Article 12, Definitions, by the current petition article. In support of changing the definition of affordable housing to include only those units available to individuals or families making 80% or less of Area Median Income,

he noted that those with this income level would make in the mid \$60,000's for a family of four, whereas those with an income at 120% of AMI would make an income in the mid \$90,000's for a family of four.

Mr. O'Connor further described the changes proposed to Article 15, Inclusionary Zoning.

Ten years ago it was clear to Town Meeting that affordable units would be required for projects that needed a Special Permit. He urged Planning Board and Town Meeting members to view the video of the discussion about Article 15 from the Town Meeting deliberations of 2005.

Mr. Crowner presented the Zoning Subcommittee report for this article. The ZSC recommended dividing the article into two separate parts. The first part would be for the change in Definition (Article 12, Definitions) and the second part would be for the expansion of the Special Permit trigger (Article 15, Inclusionary Zoning). These are the two important parts of the proposed zoning amendments. The other more minor changes are not a focus of the amendment for the ZSC.

The ZSC is concerned that the expansion of the requirement for affordable units to all Special Permits will discourage development, no affordable units will be built and the town will be exposed to a takings lawsuit. Special Permits granted for dimensional modifications are not sufficient to trigger the requirement for affordable units in most cases. These Special Permits are different from Special Permits required for use.

With dimensional modifications, a developer can be given permission for a very small change. It is not fair to require the provision of affordable units for any kind of Special Permit, including for small changes in dimension.

The ZSC opposes this proposal and is in the process of developing its own version of Inclusionary Zoning that would apply to all Special Permits.

The ZSC recommends to the Planning Board that the Board move to divide this article into two parts – one part proposing changes to Article 12, Definitions, and the other part proposing changes to Article 15, Inclusionary Zoning. The ZSC further recommends that the Planning Board support the first part for the definitional change and refer to the Planning Board the second part for changes to Article 15.

The Planning Board is aware that housing at the 120% level of AMI is very much needed. However, 120% of AMI is not measured by the federal or state government and there is no way to administer housing at this level of income. The ZSC is comfortable with the move to 80% or less of AMI and the ZSC does not support a blanket extension of Inclusionary Zoning to all projects requiring Special Permits.

Mr. Crowner noted that none of the current Planning Board members were on the Board when Article 15, Inclusionary Zoning, was adopted by Town Meeting. Mr. Crowner was a Town Meeting member at that time and voted for Article 15. He has watched the video of the Town Meeting debate and agrees that the presentation of Article 15 at that time was not clear. However, when he listened to the debate he understood that the intention of Article 15 was to apply the requirement to projects that needed a Special Permit for use, not for by-right uses that needed a Special Permit for dimensional modifications. The interpretation since then has been correct. Affordable units are expensive to provide. There is the cost of construction, the cost of administration, outreach to potential tenants or owners and the loss of profit. We should not lightly brush these facts aside.

Mr. O'Connor noted that Town Meeting moderators tell Town Meeting members not to vote on what people say on the floor of Town Meeting but on what is written. He asserted that the words of the Inclusionary Zoning amendment were unmistakable.

Mr. O'Connor stated that the housing units that are being built now are renting for two times the cost of comparable units, without the burden of affordable housing. Town Meeting members are well-informed and he hopes they will vote to approve this zoning amendment.

Mr. O'Connor asserted that the mixed-use buildings that are being built today are comparable to apartment buildings and that Town Meeting clearly intended to include apartment buildings in the requirement for affordable units. Five years ago the town didn't know what was going to get built in the future.

Mr. Stutsman acknowledged receipt of a memorandum on the zoning amendment from Planning Department staff.

Sarah la Cour, Executive Director of the BID, reported that the BID had also submitted a memorandum. The BID has concerns about this article, including the changes to the definition of affordable housing. The Inclusionary Zoning article that was presented to Town Meeting last spring included units up to 95% of AMI as moderate income housing. We need all types of housing. The BID is concerned about removing moderate income housing from the definition.

Ms. la Cour stated that lots in the downtown have difficult configurations. She stated that including moderate income housing gives more room to developers in the "delta" – the difference between the rent they can get from market rate units versus the rent they can get from affordable units. The Inclusionary Zoning Bylaw goes along with the tax incentive. She referred to Special Permits with a large "S" versus Special Permits with a small "s". The Special Permits with a large "S" indicate the use is not allowed by right. The Special Permits with a small "s" indicate that the use is allowed by right but a special permit is needed to modify the project. These modifications are needed in the downtown due to the difficult configurations of the lots.

Ms. la Cour asserted that Town Meeting had increased the number of floors allowed in the downtown to 5 floors, but had not increased the height beyond 55 feet. Therefore small dimensional modifications in height are needed for most buildings. Ms. la Cour recommended that the portion of the zoning amendment dealing with Article 15, Inclusionary Zoning, be referred back to the Planning Board.

Maurianne Adams of Precinct 10 spoke in support of the proposed zoning amendment. She stated that she had watched the video of the Town Meeting debate on Article 15 from 2005 and had heard "no hint that a Special Permit is a term of art." She had brought a warrant article a few years ago to try to correct the interpretation. Town Counsel had conceded that the point was arguable. Nothing was done to clarify the issue until the Boltwood project came up.

Ms. Adams stated that Boltwood, Kendrick and the Carriage Shops projects were not considered to be subject to the affordable housing requirement because of the interpretation of the Bylaw. "At a certain point dimensional modifications become functional differences" she said. "At a certain point you have a different kind of project."

Ms. Adams noted that advocates of affordable housing won't necessarily agree with the business community. The last attempt at Inclusionary Zoning was unacceptable because of proposed densification.

Janet Keller of Precinct 1 spoke in support of Ms. Adams comments. She strongly supported the change in the definition of affordable housing to include only those units available to those making 80% or less of AMI. A family of four making \$65,000 could afford a unit. The income level of 120% of AMI is a much higher income. 80% is recognized by the state's SHI (Subsidized Housing Inventory).

Mollye Lockwood, Vice-president of Real Estate and Community Development for W. D. Cowls stated that the town needs units at a range of affordability and needs a variety of housing. She appreciates the history of Article 15 but thinks that the wording needs to be fixed and agrees that it should be referred back to the Planning Board.

Mr. O'Connor thanked the Chair for allowing him to give a complete presentation and he left for a previous engagement.

Mr. Crouner reiterated that the ZSC is working on a new version of Inclusionary Zoning. He stated that the motion to refer is not a hollow one and the ZSC will continue to work on this.

Mr. Stutsman stated that the ZSC would like to produce an Inclusionary Zoning article that is proportional and fair. The ZSC is looking at an amendment that would take the volume of a building and apply Inclusionary Zoning to that portion of the building that is allowed by Special Permit.

Mr. Crouner MOVED to close the public hearing and that the Planning Board make a motion at Town Meeting to divide the proposed zoning amendment [Article 33, Inclusionary Zoning] into two sections, the first having to do with Article 12, Definitions, and the second having to do with Article 15, Inclusionary Zoning, and that the Planning Board recommend to Town Meeting to support the first part having to do with Article 12, Definitions, and to refer to the Planning Board the second part having to do with Article 15, Inclusionary Zoning, and further that if the motion to divide is not approved or if the motion to refer is not approved, that the Planning Board recommends to Town Meeting that the zoning amendment be defeated in its entirety. Mr. Carson seconded and the vote was 5-0-0.

A-09-16 Zoning Map – 67 Amity Street (Jones Library Trustees)

To see if the Town will amend the Official Zoning Map such that the Amherst Historical Society property at 67 Amity Street (Map 14A/Parcel 35) and an area extending out from the street frontages of said property to the midline of adjacent public ways (Amity Street and North Prospect Street) shall be rezoned from their current designation of General Residence (R-G) to General Business (B-G).

Mr. Stutsman read the preamble and opened the public hearing.

Sharon Sharry, Director of the Jones Library, gave the presentation along with Gigi Barnhill, President of the Amherst Historical Society and Museum.

Ms. Sharry stated that since 2009 the Historical Society and the Jones Library have been discussing sharing exhibit space, meeting rooms and climate controlled storage spaces. The two organizations have similar programmatic and physical needs. The Town of Amherst, the Jones Library and the Historical Society have been working on drafting a Memorandum of Understanding (MOU). The Library plans to apply for an MBLC (Massachusetts Board of Library Commissioners) construction grant in January 2017. The proposed expansion of the Library would move in the direction of the Historical Museum property.

Ms. Barnhill stated that the Historical Society proposes to change the zoning of its property from R-G (General Residence) to B-G (General Business). This is required because the property would become non-conforming if the Library were to purchase a portion of the

property. The B-G zoning district includes other cultural organizations such as the Jones Library and the Amherst Cinema. The current zoning is “strange” and the Museum should be included in the General Business district.

Mr. Crowner presented the ZSC report. He offered the following comments.

When the Planning Board considers a request for rezoning of a particular parcel of land, it generally comes with a purpose or project in mind. However the Planning Board considers the request on its face, and not with regard to the project itself. The Planning Board asks if the proposed change from one zone to another is appropriate for the parcel or not. The Planning Board appreciates the value that the Library brings to the downtown and to the town, but the recommendation is not based on a review of whether the Jones Library should expand or not. The question is, “Is the Historical Museum lot more appropriately zoned B-G? The answer is ‘yes’.” The Library parcel is zoned B-G, only a few feet from the Historical Museum. The Historical Museum lot lies across the street from the B-L district. The Planning Board acknowledges that it abuts a residential district. However, the downtown is a small area of town and is probably too small. Generally the Planning Board would like to see downtown zoning expand. This rezoning doesn’t appear to create the opportunity for any new developments. It is an appropriate parcel to be zoned B-G. It is connected to the B-G district. The Zoning Subcommittee’s recommendation is to recommend Article 31 to Town Meeting and to take no position on Article 32.

Ms. Adams stated that she supports the rezoning of the Historical Museum property in principle. However, there will be concern about “zoning creep”. She strongly urged that the language used at Town Meeting only talk about this one area for rezoning. She would like a clarification about the definition of “downtown” and stated that in her mind there are different “downtowns”. She would like the Planning Board to develop a functional definition of “downtown”.

Mr. Crowner MOVED to close the public hearing that the Planning Board recommend Article 31 to Town Meeting. Mr. Carson seconded and the vote was 5-0-0.

III. ZONING

- A.** Zoning Subcommittee Report – Mr. Crowner presented the ZSC report. The ZSC is working on a different approach to Inclusionary Zoning. It would apply to all Special Permits, including those for use and for dimensional modifications, not as a blanket requirement but in a proportional and fair way. The ZSC is also trying to figure out a way to allow some increase of residential density in some of the areas adjacent to downtown that are currently zoned B-L. The B-L zoning district is scattered geographically and is varied in terms of the size of lots. It is not uniform. The ZSC approach is to carve up the B-L zoning district into appropriate divisions and to find a way to increase residential density in the areas closest to downtown. The ZSC is exploring ways to reduce size limits on lots in the B-L adjacent to downtown and is trying to understand the zoning district. The ZSC is also working on another article that would allow for renumbering and cross referencing. The amendment would allow the Town Clerk to renumber articles at the request of the Planning Board. It would allow renumbering of the Special Districts section of the Zoning Bylaw. It would not affect any use or provision of the Bylaw. The amendment appears to be ready and may be presented for fall.
- B.** Public Comment Period – Ms. Adams stated that there are differences among the B-L districts in town. She is a resident of a pocket neighborhood behind a B-L district. The

area is not the same as the B-G. It is a transition area. She would like it to be treated in a way that respects the residential neighborhoods. She noted that the business community is organized and has a paid staff. The neighborhoods are not organized and do not have paid staff to represent them.

Mr. Stutsman stated that the Planning Board recognizes that the B-L is a transition zone. The proposal being worked on would allow greater density, but the district would remain transitional. The current effort focuses on two B-L districts – the one near North Pleasant Street and the one off South Prospect Street. It does not include the B-L district at Triangle and Cottage Streets. He noted that there are different interpretations of the word “downtown”.

IV. OLD BUSINESS

Topics not reasonably anticipated 48 hours prior to the meeting – none

V. NEW BUSINESS

Topics not reasonably anticipated 48 hours prior to the meeting – none

VI. FORM A (ANR) SUBDIVISION APPLICATIONS – none

VII. UPCOMING ZBA APPLICATIONS – Ms. Brestrup reported that there are many new Site Plan Review applications and that the Planning Board will be seeing these soon.

VIII. UPCOMING SPP/SPR/SUB APPLICATIONS – none

IX. PLANNING BOARD COMMITTEE & LIAISON REPORTS – none

Pioneer Valley Planning Commission – Bruce Carson
Community Preservation Act Committee – Pari Riahi
Agricultural Commission – Stephen Schreiber
Transportation Task Force – Christine Gray-Mullen, Rob Crouner & Richard Roznoy
Design Review Board – vacant
Housing and Sheltering Committee – Greg Stutsman
Zoning Subcommittee – Rob Crouner, Bruce Carson and Greg Stutsman
UTAC (University and Town of Amherst Collaborative) – Greg Stutsman

X. REPORT OF THE CHAIR – The Planning Board can discuss who will attend Precinct Meetings at its next meeting on April 20.

XI. REPORT OF STAFF – none

XII. ADJOURNMENT

The meeting was adjourned at 8:10 PM.

Respectfully submitted:

Approved:

Christine M. Brestrup
Interim Planning Director

Greg Stutsman, Acting Chair

DATE: _____